FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 02-CA-277758	Date Filed 5-23-21

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
WNYC/New York Public Media

b. Tel. No.
(646) 829-4400

c. Cell No.

f. Fax. No.

d. Address *(Street, city, state, and ZIP code)*
160 Varick Street, 8th Floor
New York, NY 10013

e. Employer Representative
(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

g. e-mail
(b) (6), (b) (7)(C) @nypublicradio.org

h. Number of workers employed
200

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Media Company

j. Identify principal product or service
Broadcasting

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3 and 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Within the last six months, WNYC has undertaken a coordinated and aggressive campaign to undermine union and protected concerted activity. Through its agents, including but not limited to (b) (6), (b) (7)(C), WNYC has engaged in unlawful conduct by: 1) Abrogating and ignoring the contractual grievance process and collective bargaining agreement; 2) Engaging in surveillance and providing the impression of surveillance of union and concerted activities; 3) Terminating the SAG-AFTRA (b) (6), (b) (7)(C) in retaliation for union and protected concerted activity; 4) Issuing disciplines, warnings and threats to several other employees for engaging in concerted activity and; 5) Maintaining and enforcing unlawful work rules, including but not limited to its "norms and behaviors," which are designed to restrain and punish concerted activity. Due to WNYC's egregious conduct, SAG-AFTRA seeks 10(j) injunctive relief.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Screen Actors Guild - American Federation of Television and Radio Artists

4a. Address *(Street and number, city, state, and ZIP code)*
1900 Broadway, Fifth Floor, New York, NY 10023

4b. Tel. No.
(212) 863-4292

4c. Cell No.

4d. Fax No.

4e. e-mail
Joshua.Mendelsohn@sagaftra.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
AFL-CIO

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

(signature of representative or person making charge)

Joshua Mendelsohn, Sr. Labor Counsel
(Print/type name and title or office, if any)

Address 1900 Broadway, Fifth Floor, New York, NY 10023

Date 5/23/2021

Tel. No.
212-863-4292

Office, if any, Cell No.

Fax No.

e-mail
joshua.mendelsohn@gmail.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlrb.gov
Telephone: (212)264-0300
Fax: (212)264-2450

Download
NLRB
Mobile App

May 27, 2021

WNYC New York Public Media
Attn: (b) (6), (b) (7)(C) President and CEO
160 Varick Street 8th Floor
New York, NY 10013

Re: WNYC/New York Public Media
Case No. 02-CA-277758

Dear (b) (6), (b) (7)(C)

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Attorney JACOB FRISCH whose telephone number is (212)776-8613. If this Board agent is not available, you may contact Supervisory Field Attorney GEOFFREY DUNHAM whose telephone number is (212)776-8609.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlrb.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

JOHN J. WALSH, JR.
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

FORM NLRB-5081
(3-11)

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER
	02-CA-277758

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

[ ] CORPORATION [ ] LLC [ ] LLP [ ] PARTNERSHIP [ ] SOLE PROPRIETORSHIP [ ] OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS *(Products handled or manufactured, or nature of services performed).*

7A. PRINCIPAL LOCATION:	7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:	B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT *(Check the appropriate box):* [ ] **CALENDAR** [ ] **12 MONTHS** or [ ] **FISCAL YEAR** *(FY DATES _____)*

	YES	NO
A. Did you **provide services** valued in excess of $50,000 directly to customers outside your State? If no, indicate actual value. $_____		
B. If you answered no to 9A, did you **provide services** valued in excess of $50,000 to customers in your State who purchased goods valued in excess of $50,000 from directly outside your State? If no, indicate the value of any such services you provided. $_____		
C. If you answered no to 9A and 9B, did you **provide services** valued in excess of $50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than $50,000, indicate amount. $_____		
D. Did you **sell goods** valued in excess of $50,000 directly to customers located outside your State? If less than $50,000, indicate amount. $_____		
E. If you answered no to 9D, did you **sell goods** valued in excess of $50,000 directly to customers located inside your State who purchased other goods valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $_____		
F. Did you **purchase and receive goods** valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $_____		
G. Did you **purchase and receive goods** valued in excess of $50,000 from enterprises who received the goods directly from points outside your State? If less than $50,000, indicate amount. $_____		
H. **Gross Revenues** from all sales or performance of services *(Check the largest amount)* [ ] $100,000 [ ] $250,000 [ ] $500,000 [ ] $1,000,000 or more If less than $100,000, indicate amount.		
I. **Did you begin operations within the last 12 months?** If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

[ ] YES [ ] NO *(If yes, name and address of association or group).*

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE *(Type or Print)*	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WNYC/NEW YORK PUBLIC MEDIA Charged Party and **SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS (SAG-AFTRA)** Charging Party	**Case 02-CA-277758**

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 27, 2021**,** I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

WNYC New York Public Media
Attn: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
[redacted]
160 Varick Street 8th Floor
New York, NY 10013

May 27, 2021
Date

Rhonda Rhodes, Designated Agent of NLRB
Name

/s/ Rhonda Rhodes
Signature

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlrb.gov
Telephone: (212)264-0300
Fax: (212)264-2450

Download
NLRB
Mobile App

May 27, 2021

Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA)
Attn: Joshua S. Mendelsohn, Senior Labor Counsel
1900 Broadway, 5th Floor
New York, NY 10023-7038

Re: WNYC/New York Public Media
Case No. 02-CA-277758

Dear Mr. Mendelsohn:

The charge that you filed in this case on May 27, 2021 has been docketed as case number 02-CA-277758. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Attorney JACOB FRISCH whose telephone number is (212)776-8613. If this Board agent is not available, you may contact Supervisory Field Attorney GEOFFREY DUNHAM whose telephone number is (212)776-8609.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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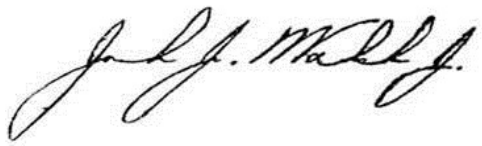
We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



JOHN J. WALSH, JR.
Regional Director

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WNYC/NEW YORK PUBLIC MEDIA Charged Party and **SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS (SAG-AFTRA)** Charging Party	**Case 02-CA-277758**

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 27, 2021**,** I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

WNYC New York Public Media
Attn: (b) (6), (b) (7)(C)
[redacted]
160 Varick Street 8th Floor
New York, NY 10013

May 27, 2021
Date

Rhonda Rhodes, Designated Agent of NLRB
Name

/s/ Rhonda Rhodes
Signature

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

WNYC/New York Public Radio

and

Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA)

CASE 02-CA-277758

☒ **REGIONAL DIRECTOR**

☐ **EXECUTIVE SECRETARY**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ **GENERAL COUNSEL**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

WNYC/New York Public Radio

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ **REPRESENTATIVE IS AN ATTORNEY**

☒ **IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.**

(REPRESENTATIVE INFORMATION)

NAME: Edward B. Lieber

MAILING ADDRESS: Kauff McGuire & Margolis LLP, 950 Third Avenue, 14th Floor, New York, NY 10022

E-MAIL ADDRESS: lieber@kmm.com

OFFICE TELEPHONE NUMBER: (212) 909-0720

CELL PHONE NUMBER: (917) 544-8972 *FAX:* (212) 909-3520

SIGNATURE: Edward Lieber
(Please sign in ink.)

DATE: 6/2/2021

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

WNYC/New York Public Media

and

CASE 02-CA-277758

☑ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

WNYC/New York Public Media

IN THE ABOVE-CAPTIONED MATTER.

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(REPRESENTATIVE INFORMATION)

NAME: Erica Frank

MAILING ADDRESS: 950 Third Avenue, 14th Floor, New York, NY 10022

E-MAIL ADDRESS: frank@kmm.com

OFFICE TELEPHONE NUMBER: (212) 909-0712

CELL PHONE NUMBER: (914) 645-3871 *FAX:* (212) 909-3512

SIGNATURE: Erica Frank
(Please sign in ink.)

DATE: 6/4/21

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

WNYC/New York Public Media

and

Screen Actors Guild - American Federation of Television and Radio Artists

CASE 02-CA-277758

☒ **REGIONAL DIRECTOR**

☐ **EXECUTIVE SECRETARY**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ **GENERAL COUNSEL**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

Screen Actors Guild - American Federation of Television and Radio Artists

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ **REPRESENTATIVE IS AN ATTORNEY**

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(REPRESENTATIVE INFORMATION)

NAME: Olivia R. SInger

MAILING ADDRESS: Cohen, Weiss and Simon LLP, 900 Third Avenue, 21st Floor, New York, NY 10022

E-MAIL ADDRESS: osinger@cwsny.com

OFFICE TELEPHONE NUMBER: (212) 356-0206

CELL PHONE NUMBER: ***FAX:***

SIGNATURE: Olivia Singer
(Please sign in ink.)

DATE: 6/11/2021

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

WNYC/New York Public Media

and

Screen Actors Guild - American Federation of Television and Radio Artists

CASE 02-CA-277758

☒ **REGIONAL DIRECTOR**

☐ **EXECUTIVE SECRETARY**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ **GENERAL COUNSEL**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

Screen Actors Guild - American Federation of Television and Radio Artists

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ **REPRESENTATIVE IS AN ATTORNEY**

☒ **IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.**

(REPRESENTATIVE INFORMATION)

NAME: Megan S. Shaw

MAILING ADDRESS: Cohen, Weiss and Simon LLP, 900 Third Avenue, 21st Floor, New York, NY 10022

E-MAIL ADDRESS: mshaw@cwsny.com

OFFICE TELEPHONE NUMBER: (212) 356-0205

CELL PHONE NUMBER: ***FAX:***

SIGNATURE: Megan Shaw
(Please sign in ink.)

DATE: 6/11/2021

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

FORM NLRB-4701
(9-03)

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CASE 02-CA-277758

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☐ **EXECUTIVE SECRETARY**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ **GENERAL COUNSEL**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

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IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ **REPRESENTATIVE IS AN ATTORNEY**

☒ **IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.**

(REPRESENTATIVE INFORMATION)

NAME: Susan Davis

MAILING ADDRESS: Cohen, Weiss and Simon LLP, 900 Third Avenue, 21st Floor, New York, NY 10022

E-MAIL ADDRESS: mshaw@cwsny.com

OFFICE TELEPHONE NUMBER: (212) 356-0207

CELL PHONE NUMBER: _____ ***FAX:*** _____

SIGNATURE: _____
(Please sign in ink.)

DATE: 6/11/2021

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 02-CA-277758	Date Filed 6-22-21

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
WNYC/New York Public Media

b. Tel. No.
(646) 829-4400

c. Cell No.

f. Fax. No.

d. Address *(Street, city, state, and ZIP code)*
160 Varick Street, 8th Floor
New York, NY 10013

e. Employer Representative
(b) (6), (b) (7)(C)

g. e-mail
(b) (6), (b) (7)(C)@nypublicradio.org

h. Number of workers employed
200

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Media Company

j. Identify principal product or service
Broadcasting

The above named emp oyer has engaged n and s engag ng n unfa r abor pract ces w th n the mean ng of sect on 8(a), subsect ons (1) and (st subsect ons) 3 and 5 of the Nat ona Labor Re at ons Act, and these unfa r abor pract ces are pract ces affect ng commerce w th n the mean ng of the Act, or these unfa r abor pract ces are pract ces affect ng commerce w th n the mean ng of the Act and the Posta Reorgan zat on Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Please see Exhibit A.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Screen Actors Guild - American Federation of Television and Radio Artists

4a. Address *(Street and number, city, state, and ZIP code)*
1900 Broadway, Fifth Floor, New York, NY 10023

4b. Tel. No.
(212) 863-4292

4c. Cell No.

4d. Fax No.

4e. e-mail
Joshua.Mendelsohn@sagaftra.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
AFL-CIO

6. DECLARATION
I dec are that I have read the above charge and that the statements are true to the best of my know edge and be ef.

Megan Shaw

(signature of rep sentative or person making charge)

Megan Stater Shaw
(Print/type name and title or office, if any)

Address 900 Third Avenue, Suite 2100 New York, NY 10022

Date 06/22/2021

Tel. No.
212.356.0205

Office, if any, Cell No.

Fax No.

e-mail
mshaw@cwsny.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Exhibit A

Exhibit A

Within the last six months, WNYC has undertaken a coordinated and aggressive campaign to undermine union and protected concerted activity. Through its agents, including but not limited to (b) (6), (b) (7)(C), WNYC has engaged in unlawful conduct by:

1) Abrogating and ignoring the contractual grievance process and collective bargaining agreement;

2) Direct dealing with union-represented employees for the purpose of establishing or changing terms and conditions of employment or undercutting SAG-AFTRA's role in bargaining;

3) Terminating the SAG-AFTRA (b) (6), (b) (7)(C) in retaliation for union and protected concerted activity;

4) Engaging in surveillance and providing the impression of surveillance of union and concerted activities;

5) Issuing disciplines, warnings, and threats to several other employees for engaging in concerted activity and;

6) Maintaining and enforcing unlawful work rules, including but not limited to its "norms and behaviors," which are designed to restrain and punish concerted activity.

Due to WNYC's egregious conduct, SAG-AFTRA seeks 10(j) injunctive relief.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlrb.gov
Telephone: (212)264-0300
Fax: (212)264-2450

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June 23, 2021

WNYC New York Public Media
Attn: (b) (6), (b) (7)(C)
160 Varick Street 8th Floor
New York, NY 10013

Re: WNYC/New York Public Media
Case No. 02-CA-277758

Dear (b) (6), (b) (7)(C)

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Attorney JACOB FRISCH whose telephone number is (212)776-8613. If the agent is not available, you may contact Supervisory Field Attorney GEOFFREY DUNHAM whose telephone number is (212)776-8609.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

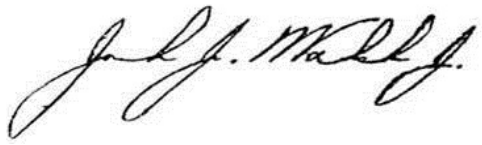
Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a

written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,



JOHN J. WALSH, JR.
Regional Director

Enclosure: Copy of first amended charge

cc: Erica E. Frank, Esq.
Kauff McGuire & Margolis, LLP
950 Third Avenue, 14th Floor,
New York, NY 10022

Edward B. Lieber, Attorney
Kauff McGuire & Margolis LLP
950 Third Avenue
14th Floor
New York, NY 10022

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WNYC NEW YORK PUBLIC MEDIA Charged Party and **SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS (SAG-AFTRA)** Charging Party	**Case 02-CA-277758**

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, D. Mahr the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 23, 2021**,** I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

WNYC New York Public Media
Attn: (b) (6), (b) (7)(C)
160 Varick Street 8th Floor
New York, NY 10013

Erica E. Frank, ESQ.
Kauff McGuire & Margolis, LLP
950 Third Avenue, 14th Floor,
New York, NY 10022

Edward B. Lieber, Attorney
Kauff McGuire & Margolis LLP
950 Third Avenue
14th Floor
New York, NY 10022

June 23, 2021

Date

D Mahr, Designated Agent of NLRB
Name

/s/ D. Mahr
Signature

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlrb.gov
Telephone: (212)264-0300
Fax: (212)264-2450

Download
NLRB
Mobile App

June 23, 2021

Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA)
Attn: Joshua S. Mendelsohn, Senior Labor Counsel
900 Third Avenue
Suite 2100
New York, NY 10022

Re: WNYC/New York Public Media
Case No. 02-CA-277758

Dear Mr. Mendelsohn:

We have docketed the first amended charge that you filed in this case.

Investigator: This charge is being investigated by Attorney JACOB FRISCH whose telephone number is (212)776-8613. If the agent is not available, you may contact Supervisory Field Attorney GEOFFREY DUNHAM whose telephone number is (212)776-8609.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn

statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

JOHN J. WALSH, JR.
Regional Director

cc: Susan Davis, Esq.
Cohen, Weiss and Simon LLP
900 Third Avenue, Floor 21
New York, NY 10022

Megan S. Shaw, Esq.
Cohen Weiss & Simon, LLP
900 Third Avenue
Suite 2100
New York, NY 10022

Olivia R. Singer, Esq.
Cohen, Weiss and Simon LLP
900 Third Ave, Suite 2100
New York, NY 10022-4869

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WNYC NEW YORK PUBLIC MEDIA Charged Party and **SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS (SAG-AFTRA)** Charging Party	**Case 02-CA-277758**

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, D. Mahr the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 23, 2021**,** I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

WNYC New York Public Media
Attn: (b) (6), (b) (7)(C)
160 Varick Street 8th Floor
New York, NY 10013

Erica E. Frank, ESQ.
Kauff McGuire & Margolis, LLP
950 Third Avenue, 14th Floor,
New York, NY 10022

Edward B. Lieber, Attorney
Kauff McGuire & Margolis LLP
950 Third Avenue
14th Floor
New York, NY 10022

June 23, 2021

Date

D Mahr, Designated Agent of NLRB
Name

/s/ D. Mahr
Signature

COHEN WEISS AND SIMON LLP

Susan Davis, Partner
Olivia R. Singer, Associate
Dan M. Nesbitt, Associate
Megan Stater Shaw, Associate
Tel: 212.356.0207
Fax: 646.473.8207
Cell: 917.282.5040

900 Third Avenue, Suite 2100 • New York, NY 10022-4869

June 30, 2021

By E-Filing and Email

Jacob Frisch
National Labor Relations Board
Region 2
26 Federal Plaza, Suite 3614
New York, New York 10278-0104

Re: WNYC/New York Public Radio, Case No. 02-CA-277758

Dear Mr. Frisch:

This letter constitutes the position statement of the Screen Actors Guild - American Federation of Television and Radio Artists, AFL-CIO ("SAG-AFTRA" or the "Union") in response to your letter dated June 14, 2021.

PRELIMINARY STATEMENT

WNYC/New York Public Radio ("NYPR") has engaged in a pervasive and calculated campaign to abrogate the parties' collective bargaining agreement and undermine the Union as the employees' chosen bargaining representative. When the Union filed a grievance in response to the sudden firing of (b) (6), (b) (7)(C), a long-time employee, NYPR refused to participate in the parties' grievance procedure and, from then on, refused to process *any* of the Union's grievances, regardless of the subject matter. NYPR also dealt directly with unit employees over proposed mid-term modifications and denied three employees their *Weingarten* rights during investigatory meetings. This conduct directly undercut the Union's role as the employees' exclusive and long-standing bargaining representative.

In furtherance of its efforts to undermine the Union, NYPR launched a campaign of retaliation, intimidation, and surveillance of bargaining unit employees. Led by the (b) (6), (b) (7)(C) [redacted], NYPR not only unlawfully discriminated against at least five employees based on the exercise of their Section 7 rights, but also intimidated the unit as a whole, surveilling concerted activity, creating the impression of such surveillance, and maintaining unlawful work rules requiring employees to communicate with management, rather than the union, and keep work matters confidential from the union.

While each separate incident, standing alone, constitutes a violation of the National Labor Relations Act, the tapestry of violations, viewed collectively, flies in the face of the Act's purpose: to promote collective bargaining and protect employee free choice. Accordingly, for

the reasons discussed below, a complaint should be issued, and the General Counsel should seek injunctive relief pursuant to Section 10(j) of the Act.

STATEMENT OF FACTS

The Parties

SAG-AFTRA is the largest entertainment industry union in the world, representing approximately 160,000 actors, broadcasters, recording artists, and other media professionals.

NYPR is a not-for-profit corporation which owns, among other entities: WNYC-FM and WNYC-AM, a public radio station in New York City; WQXR-FM, a classical radio station in New York; Gothamist, a New York City news website; and WNYC Studios, a producer and distributor of podcasts and on-demand audio products.

The Union and NYPR have had a collective bargaining relationship since 1999. [redacted] Aff. ¶ 2. This unit includes employees at WNYC-FM, WNYC-FM, WQXR-FM, Gothamist, and WNYC Studios. Exhibit ("Exh.") A, Art. I-II. Over time, the NYPR bargaining unit has expanded to include approximately 120 part-time, temporary, and per diem employees, as well as digital-side employees at WNYC, WQXR, and Gothamist. [redacted] Aff. ¶ 3; [redacted] Aff. ¶ 1; Exh. A, Art. II § 1(c), XXXVIII-XXXIX. The most recent collective bargaining agreement ("CBA") is effective from July 1, 2018, to June 30, 2022. [redacted] Aff. ¶ 4; Exh. A.

Termination of [redacted] and NYPR's Refusal to Process Grievances

[redacted] became NYPR's [redacted] in the [redacted] of 2020.[1] At an all-staff meeting after [redacted] hiring in [redacted] 2020, [redacted] announced that [redacted] [redacted] Aff. ¶ 5.

Shortly after making this statement, on [redacted], 2021, [redacted] terminated [redacted], a long-time, respected [redacted]. At an all-staff meeting convened that day, [redacted] said that [redacted][2] [redacted] Aff. ¶ 16. The

[1] [redacted]

[2] [redacted]

sole basis for this allegation was [redacted] claim that [redacted] had failed to properly credit the Associated Press in a draft story. Exh. B.

[redacted] investigated Mogul's termination. [redacted] Aff. ¶¶ 12–13. [redacted] spoke to multiple bargaining unit members and stewards, all of whom said the same thing: they were shocked that [redacted] was fired because there had been a longstanding practice of permitting reporters to cite the Associated Press exactly as [redacted] had done. *Id.* Indeed, the Union received and reviewed numerous stories where NYPR reporters had used the same reporting and crediting structure that [redacted] had used, without being subjected to any discipline. [redacted] Aff. ¶ 15.

On [redacted], the Union filed a grievance regarding [redacted] termination with NYPR's [redacted]. [redacted] Aff. ¶ 18; Exh. C. The grievance was based on Article XXI, Section 1, which defines the term "grievance" to include, among other things, "any dispute arising out of . . . any appeal of a claimed wrongful disciplinary action."

NYPR refused to process the Union's grievance. In a [redacted] letter, NYPR asserted that there was "no cognizable grievance" because Article XXVI, Section 1 excluded [redacted] termination from the grievance-arbitration procedure. [redacted] Aff. ¶ 19; Exh. D. SAG-AFTRA responded on [redacted] explaining that, under the parties' past practice, the grievance procedure applied to wrongful disciplinary actions, even if there was a termination and regardless of the employee's job category. [redacted] Aff. ¶ 20; Exh. E. A few years ago, for example, several [redacted] were terminated after [redacted] [redacted] Aff. ¶ 7. The Union filed grievances on the [redacted] behalf, and notwithstanding Article XXVI, NYPR processed the grievances. *Id.*

The Union filed two additional grievances on [redacted] The first grievance alleged that NYPR failed to provide [redacted] with severance pay pursuant to Article XXIII, Section 6, which provides that, for a termination without cause, NYPR "shall pay severance pay . . . to an employee in the job title of Host." [redacted] Aff. ¶ 25; Exh. F. Article XXVI, Section 1 confirms that "persons occupying the job title[] of Host . . . shall be subject, if eligible," to the provisions governing severance pay. [redacted] Aff. ¶ 6.

The second grievance alleged that NYPR failed to adhere to the contractual grievance procedure when it refused to process [redacted] termination grievance. [redacted] Aff. ¶ 26; Exh. G. This grievance was based on Article XXI, Section 1, which provides that the term "grievance" also includes a dispute arising out of the "interpretation, application or a claimed violation of this Agreement." The Union contended that there was a contractual dispute over whether [redacted] wrongful disciplinary action was covered by the CBA's grievance procedure.

NYPR responded to the severance pay and failure-to-adhere grievances on [redacted] Aff. ¶ 25. Once again, NYPR flatly refused to process the grievances. [redacted] Aff. ¶¶ 26–27; Exh. H. The Union then filed an arbitration request with the American Arbitration Association ("AAA") on [redacted] Exh. I.[3]

Shortly afterwards, on May 17, SAG-AFTRA learned that NYPR had fired [redacted], a bargaining unit member and [redacted] Aff. ¶ 28. Contravening the parties' past practice, NYPR did not notify the Union of [redacted] termination, and [redacted] did not have a Union representative present to assist [redacted] when [redacted] was terminated. [redacted] Aff. ¶¶ 9, 28.[4]

Faced with NYPR's complete rejection of the grievance and arbitration process in the collective bargaining agreement, SAG-AFTRA had no choice but to file a motion to compel arbitration in federal court based on the [redacted] termination grievance, the [redacted] severance pay grievance, and the abrogation of the grievance process on June 4. NYPR has opposed SAG-AFTRA's motion to compel arbitration.[5]

Employee Protected Speech in Response to [redacted] Termination

There is a strong history of NYPR employees exercising their Section 7 rights by speaking out in the workplace and asking pointed questions of management. [redacted] Aff. ¶ 26; [redacted] Aff. ¶ 14; [redacted] Aff. ¶ 8. [redacted] termination and NYPR's abrogation of the parties' collective bargaining agreement sparked an immediate wave of protected, concerted action from the bargaining unit employees in the newsroom due to Mogul's long-standing position at NYPR.

---

[3] NYPR rejected the Union's arbitration request in a statement to the AAA, arguing that the claim was not subject to arbitration and outside the AAA's jurisdiction. Exh. J. It was only after the Union filed a federal lawsuit to compel arbitration, *infra*, that NYPR agreed to pick an arbitrator.

[4] On [redacted] after the instant charges had been filed, the Union submitted a grievance challenging the process leading to [redacted] termination and NYPR's failure to provide [redacted] with severance pay. Exh. K. NYPR refused to process the grievance regarding severance pay. Although it agreed to process the grievance for failing to allow a union representative during WNYC's investigatory meeting or providing SAG-AFTRA with notice for the meeting without limiting or waiving any other arguments or rights NYPR has under the CBA, and any other substantive or factual positions NYPR may take," Exh. L, its post-charge conduct cannot cure the pending charge. *See infra* Part I.A.

[5] [redacted]

Multiple unit members challenged the reasons for [redacted] termination, arguing that NYPR employees had a past practice of using Associated Press copy in the precise way that [redacted] had done. At an all-staff meeting on [redacted], the day of [redacted] termination, multiple employees asked questions about this issue. [redacted], a [redacted] who NYPR later fired for speaking out, asked [redacted], [redacted] was [redacted] by [redacted] question, and [redacted] refused. [redacted] Aff. ¶ 16. That same day, three newsroom employees, [redacted], and [redacted], emailed the entire newsroom and NYPR management, including [redacted], [redacted], and [redacted], expressing their concern about [redacted] termination. Exh. M. On February 10, more than *sixty employees* sent a petition to [redacted] regarding [redacted] termination. Exh. N; [redacted] Aff. ¶ 20.

In mid-March, about ten employees, including [redacted] and [redacted], met with [redacted] and [redacted], to discuss concerns regarding employees' workload and [redacted] negative comments about other employees in the workplace. [redacted] Aff. ¶¶ 13-14. On May 13, [redacted] told [redacted] that "[redacted]" and that [redacted] "[redacted] *Id*. ¶ 20. [redacted] disdain for employee speech was not limited to employee reactions to [redacted] termination. In at least two meetings with employees in spring 2021, [redacted] disclosed information from the personnel file of [redacted], a unit employee who had made fun of [redacted] for being [redacted] at an all-staff holiday party in December 2020. [redacted] Aff. ¶ 3, 13.[6]

NYPR's Surveillance of Unit Employees

In the aftermath of [redacted] termination and the employee uproar in response in [redacted] 2021, NYPR began a campaign of repeated surveillance and discipline of employees in an attempt to quell their protected concerted activity.

On March 1, [redacted], a unit employee, engaging in the protected activity of discussing [redacted] work conditions online, posted on [redacted] public Twitter account: [redacted] Aff. ¶ 4. Three NYPR employees, former

[6] One employee who witnessed [redacted] discussing [redacted] personnel file may be willing to submit an affidavit to the NLRB. *See also* [redacted]

writers for Gothamist, and 84 people in total "liked" [redacted] tweet and five people commented on [redacted] post.[7]

Later that morning, [redacted] supervisor asked [redacted] to meet with [redacted]. *Id.* ¶¶ 5. At the meeting, [redacted] told [redacted] that [redacted] supervisors, [redacted] and [redacted], took [redacted] tweet personally, especially its reference to [redacted] *Id.* ¶ 6. [redacted] also said that [redacted] had suggested [redacted] tweet could violate NYPR's "Norms and Behaviors," its work rules, discussed below, that unquestionably chill employees' Section 7 rights. *Id.*[8] On March 2, [redacted] requested that [redacted] speak to [redacted] on the phone. *Id.* ¶ 8. On March 3, during their phone call, [redacted] told [redacted] that [redacted] [redacted]" and that [redacted] [redacted] *Id.* ¶ 10.

On April 27, in a further attempt to prevent employees from discussing their terms and conditions of employment, [redacted] sent an email restricting which employees in the future could communicate to all employees at once using their work emails. Exh. P; [redacted] Aff. ¶ 3. Later that same day, [redacted], a unit employee, tweeted, [redacted] [redacted] Aff. ¶ 4. A few minutes after [redacted] tweeted this, [redacted] joined a prescheduled Zoom meeting with [redacted] supervisor, [redacted]. [redacted] Aff. ¶ 5. At the end of this meeting, [redacted] asked [redacted] to join [redacted] on a Slack call. On Slack, [redacted] asked [redacted] whether [redacted] tweet referred to [redacted] earlier email. [redacted] responded, "Am I in trouble?" [redacted] said "no," but gave [redacted] a lecture on "being professional" and the importance of refraining from "sub-tweet[ing]" [redacted] employer. [redacted] then said: [redacted] [redacted] then reiterated that NYPR's leadership team was "paying attention to this." [redacted] Aff. ¶ 6. Given the short amount of time between [redacted] tweet and [redacted] meeting with [redacted], [redacted] believed that either [redacted] had seen the tweet immediately before or during the Zoom meeting, or someone else at NYPR was monitoring [redacted] Twitter activity. [redacted] Aff. ¶ 7. Feeling [redacted] [redacted] deleted the tweet. [redacted] Aff. ¶ 8. At a department meeting a week later, [redacted] told the entire department that employees should [redacted] [redacted] Aff. ¶ 8.

NYPR's surveillance of and threats concerning employees' protected activity in March and April 2021 was just one part of its efforts to undermine the Union in the eyes of the bargaining unit employees, following its refusal to participate in the grievance of [redacted]

---

[7] [redacted] (Mar. 1, 2021 at 12:56 A.M.), [redacted]

[8] NYPR maintains workplace standards in a document known as "Norms and Behaviors." [redacted] Aff. ¶ 7. These standards were revised under [redacted] leadership. *Id.*; Exh. O (dated December 14, 2020).

termination. Alongside NYPR's continued refusal throughout 2021 to participate in the parties' grievance procedure, supervisors made overt comments about their desire to restrict Union activity. In early April, (b) (6), (b) (7)(C) , spoke with (b) (6), (b) (7)(C) on the phone about changes (b) (6), (b) (7)(C) hoped to make in the newsroom. When (b) (6), (b) (7)(C) pointed out that the Union may not appreciate the changes (b) (6), (b) (7)(C) wanted, (b) (6), (b) (7)(C) said: "Well, the union has a shitty contract and they don't concern me. I don't care what the union thinks, and I can do what I want."[9] Likewise, when one unit employee[10] reached out to (b) (6), (b) (7)(C), NYPR's (b) (6), (b) (7)(C) , for advice about scheduling issues and mentioned that (b) (6), (b) was also going to speak to (b) (6), (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) told (b) (6), (b) (6), (b) (7)(C), (b) (7)(D) " (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 4.

NYPR's (b) (6), (b) (7)(C) Midterm Unilateral Changes and Subsequent Denial of Employees' *Weingarten* Rights

On (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) emailed all NYPR staff to announce certain layoffs, as well as changes to executive compensation, the employees' vacation day carryover policy, and merit pay increases for employees earning over $100,000 due to NYPR's "sizable deficit[.]" Exh. Q.

(b) (6), (b) (7)(C), an outspoken Union (b) (6), (b) (7)(C) who had criticized both (b) (6), (b) (7)(C) termination and (b) (6), (b) (7)(C) conduct, was among the employees who lost their jobs that day. (b) (6), (b) (7)(C), (b) (7) Aff. ¶¶ 11-12, 16, 30. The circumstances surrounding (b) (6), (b) (7)(C) termination demonstrate that NYPR's justification for terminating (b) (6), (b) were clearly pretextual. Unlike other employees laid off on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was treated like a fired employee and was denied access to NYPR resources to complete a project, (b) (6), (b) (7)(C) , that was ongoing at the time of (b) (6), termination. (b) (6), (b) (7)(C), (Aff. ¶ 12; (b) (6), (b) (7)(C), (b) (Aff. ¶¶ 30–31. Although (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) at (b) (6), termination meeting that NYPR no longer needed (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (Aff. ¶ 30, a recruiter for NYPR told (b) (6), (b) (7)(C) that (b) (6) should apply for a position because (b) (6) had the necessary skills to work for them soon after (b) (6), termination, (b) (6), (b) (7)(C), (b) (Aff. ¶ 32, and (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) at a meeting on May 13 that it was (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C) Aff. ¶ 19. A new (b) (6), (b) (7)(C) was even hired in the newsroom shortly after (b) (6), termination. (b) (6), (b) (7)(C), (b) (Aff. ¶ 33.

[9] (b) (6), (b) (7)(C) is willing to speak to the NLRB.

[10] This unit employee may be willing to submit an affidavit to the NLRB.

(b) (6), (b) (7)(C) called an all-staff meeting to discuss the announced changes on (b) (6), (b) (7)(C) Exh. Q; (b) (6), (b) (7)(C), Aff. ¶ 3. At the meeting, (b) (6), (b) (7)(C) discussed the layoffs and changes to employee benefits from (b) (6), email earlier that day, and then opened the meeting to employee questions. (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶¶ 4-5; (b) (6), (b) (7)(C), Aff. ¶ 4. One employee, (b) (6), (b) (7)(C), asked whether the layoffs were retaliatory, given that one laid-off employee had critiqued (b) (6), (b) (7)(C) in the *New York Times* and that many laid-off employees were "(b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), Aff. ¶ 4. (b) (6), (b) (7)(C), a unit employee, spoke out in support of (b) (6), (b) (7)(by asking NYPR to (b) (6), (b) (7)(C), (b) (7)(D) *Id*.. The NYPR manager hosting the Zoom meeting then muted (b) (6), (b) (7)(C) so (b) (6), could not ask any follow-up questions. *Id*.. When a coworker asked for the Zoom meeting's chat function to be enabled in order to be able to ask questions, (b) (6), (b) (7)(C) wrote "open the chat" on a whiteboard displayed in front of (b) (6), camera to express agreement while muted. *Id*..

Multiple employees, wondering whether the "layoffs" were truly cost-saving measures, asked whether there would be executive pay cuts, and whether NYPR would be releasing its Form-990s, which disclose executive compensation at non-profit organizations. (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 5. (b) (6), (b) (7)(C), a unit employee, joined these employees' criticism and asked again whether executive compensation would be publicly disclosed. *Id.* ¶ 6. When (b) (6), (b) (7)(C) responded that (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C) responded, (b) (6), (b) (7)(C), (b) (7)(D) The NYPR manager administering the Zoom then muted (b) (6), (b) (7)(C). *Id*. On or around the same time, (b) (6), (b) (7)(C) wrote "990" on (b) (6), whiteboard and held it up to (b) (6), camera to express agreement with (b) (6), coworkers' questions regarding executive compensation. (b) (6), (b) (7)(C), Aff. ¶ 5. (b) (6), (b) (7)(C) then used (b) (6), whiteboard a third time to express agreement with another question during the meeting. *Id*.

On May 3, both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) received Zoom invites to meet with (b) (6), (b) (7)(C) on May 4. (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 9; (b) (6), (b) (7)(C), Aff. ¶ 6. (b) (6), (b) (7)(C) Zoom invite included (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) supervisor. (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 1, 9. (b) (6), (b) (7)(C) Zoom invite included (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) "supervisor's supervisor." (b) (6), (b) (7)(C), Aff. ¶ 6. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that the meeting was scheduled because (b) (6), (b) (7)(C), (b) (7)(D) including (b) (6), (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 10. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) contacted their (b) (6), (b) (7)(C) , to see if they could have union representation at the meeting; (b) (6), (b) (7)(C) suggested reaching out to SAG-AFTRA's in-house counsel, Richard Larkin and Josh Mendelsohn, who could be present to represent them at the meeting. (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 11; (b) (6), (b) (7)(C), Aff. ¶¶ 10-11.

At 9:30 P.M. that night, Larkin informed Edward Lieber, NYPR counsel, that both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) wanted union representation at their May 4 meetings, and that Mendelsohn would be joining them on Zoom. Lieber responded that the meetings were "neither disciplinary nor investigatory," but that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) could bring a shop steward—but not Mendelsohn—to their meetings, thereby interfering with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) choice of union representative. Larkin replied the next morning, asking for the purpose of the meeting

and emphasizing that "[b]oth members have requested that Josh [Mendelsohn] be there." After Larkin made that request, Lieber wrote back at 9:05 A.M., "(b) (6), (b) (7)(C) will send an email with the information that was to be conveyed in the meeting." At 9:38 A.M., Lieber clarified, "[T]he meetings are cancelled and (b) (6), (b) (7)(C) will be sending emails." Exh. R; *see also* (b) (6), (b) (7)(C), Aff. ¶¶ 12-13; (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 12; (b) (6), (b) (7)(C), Aff. ¶ 24.

On May 5, both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) received emails from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (7)(D) ¶ 13; (b) (6), (b) (7)(C), Aff. ¶ 16. Both emails are identical, with the exception of the specific conduct that (b) (6), (b) (7)(C) attributes to (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C), and state that they are for the purpose of "provid[ing] you with some feedback on your communication and behavior during the all-staff meeting, *some of which was not appropriate in the workplace*." Exh. S; Exh. T (emphasis added). (b) (6), (b) (7)(C) identified (b) (6), (b) (7)(C) questions at the all-staff meeting as "combative" and stated that "[i]t is ok to not be satisfied with the answer that was given, but you continued to repeat the same question, which at the time, prevented others from having an opportunity to ask their questions." Exh. S. To (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) referenced (b) (6), (use of the whiteboard, presuming that (b) (6), (b) (7)(C) used it "with the intention of having people attending the meeting pay attention to (b) (6), (b) (7)(C) and [(b) (6), (b) message instead of paying attention to the person who was asked or answering a question." (b) (6), (b) (7)(C) then expressed "[o]ur expectation . . . that you will show the same respect to others in the future that was shown to you during the meeting." Exh. T.

NYPR's unlawful interference with employees' right to *Weingarten* representation was not limited to (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C), (b) (7)(D). (b) (6), (b) (7)(C) again unlawfully denied union representation to a unit employee, (b) (6), (b) (7)(C), for an investigatory meeting on May 27. On May 26, (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) to meet with (b) (to (b) (6), (b) (7)(C), (b) (7)(D) about an ongoing HR investigation into the conduct of (b) (6), (b) (7)(C) of the show (b) (6), (b) (7)(C) worked on, (b) (6), (b) . (b) (6), (b) (7)(C), (b) (Aff. ¶ 5, 15; Exh. U.[11] This email came on the heels of a May 20 meeting about the investigation that included staff of (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), during which (b) (6), (b) (7)(and (b) (6), (b) (7)(C) had had a heated altercation, and the publication of a *New York Times* article which referenced the investigation on May 23. (b) (6), (b) (7)(C), (b) (Aff. ¶¶ 11-13.[12]

A (b) (6), (b) (7)(C) at *The Takeaway* told (b) (6), (b) (7)(C) that (b) (6), (believed the meeting was in response to the altercation between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(on May 20. (b) (6), (b) (7)(C), (b) (Aff. ¶ 16.

[11] On April 23, three employees, including Union member (b) (6), (b) (7)(C), filed individual complaints with (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) of the show that they worked on, (b) (6), (b) (7)(C), created a hostile work environment, culminating in an incident on April 22. (b) (6), (b) (7)(C), (Aff. ¶ 5; Exh. V. On April 27, Janna Freed, NYPR counsel, emailed (b) (6), (b) (7)(C) to announce that NYPR's outside counsel would investigate (b) (6), allegations. (b) (6), (b) (7)(C), (Aff. ¶ 7; Exh. V. Freed specified that this investigation was "confidential, so that we can protect the integrity of the process." Exh. V.

[12] *See also* (b) (6), (b) (7)(C) [redacted]

Accordingly, (b) (6), (b) (7)(C) asked if the meeting would be disciplinary and, if so, requested a union representative. (b) (6), (b) (7)(C), (b) (7 Aff. ¶ 17; Exh. U. (b) (6), (b) (7)(C) responded that the meeting was not disciplinary, and later emailed to confirm with (b) (6), (b) (7)(C) (b) (6), understanding "(b) (6), (b) (7)(C), (b) (7)(D) and no one else. (b) (6), (b) (7)(C), (b) (7 Aff. ¶ 18; Exh. U. However, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) meeting on May 27 quickly became investigatory. (b) (6), (b) (7)(C), (b) (Aff. ¶ 22. (b) (6), (b) (7)(C) spoke for over five minutes about the need to keep the HR investigation confidential and emphasized that employees had "broken trust with management" by speaking with the *Times*. (b) (6), (b) then told (b) (6), (b) (7)(C) that NYPR believed that (b) (6), (b) (7)(C), (b) (7)(D) spoke to "someone in the newsroom," and that that person from the newsroom spoke to the *Times*. (b) (6), (b) continued, (b) (6), (b) (7)(C), (b) (7)(D) for violating management's trust. (b) (6), (b) (7)(C), (b) (Aff. ¶ 22. This comment reasonably led (b) (6), (b) (7)(C) to believe (b) (6), (b) (7 and kept quiet because (b) (6) (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7) Aff. ¶ 22.

Unlawful Bargaining with Unit Employees about the (b) (6), (b) (7)(C) Mid-Term Changes

On June 1, (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C), a unit employee, (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) , without copying SAG-AFTRA, to request bargaining. (b) (6), (b) (7)(C), (Aff. ¶ 15; Exh. W. (b) (6), (b) (7)(C) stated that NYPR wanted to discuss the "cost saving measures" in (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) announcement, and (b) (6), (b announcement, and (b) (6), (b) explicitly referenced the pay freezes and vacation carryover policy. (b) (6), (b) (7)(C), (Aff. ¶ 15; Exh. W.

(b) (6), (b) (7)(C) wanted to schedule the meeting so that NYPR could "let our employees know what we are hoping to achieve in terms of vacation carryover" and "share our thinking" on why "holding the pay increases for employees making over $100,000" was "important." Exh. X. Shop stewards, however, have never been authorized to negotiate on behalf of the unit. (b) (6), (b) (7)(C), Aff. ¶ 29. Similarly, bargaining is not within the jurisdiction of the Labor-Management Committee, (b) (6), (b) (7)(C), Aff. ¶ 29; (b) (6), (b) (7)(C), (Aff. ¶ 13, and (b) (6), (b) (7)(C) June 1 email was (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (Aff. ¶ 15.

On June 3, (b) (6), (b) (7)(C), (told (b) (6), (b) (7)(C) that the issues (b) (6), (b raised with (b) (6), (b) (7)(C) needed to be discussed with SAG-AFTRA, the bargaining agent. (b) (6), (b) (7)(C), Aff. ¶ 29; Exh. X. (b) (6), (b) (7)(C) sent a similar email the following day, stating that the Union's position (b) (6), (b) (7)(C), (b) (7)(D) and that (b) (6), (b) (7)(C) proposed meeting (b) (6), (b) (7)(C), (b) (7)(D) Exh. X.

(b) (6), (b) (7)(C) ignored SAG-AFTRA's right to designate its bargaining representative. Responding to (b) (6), (b) (7)(C) email, (b) (6), (b) (7)(C) insisted that NYPR could discuss these issues with the

stewards, rather than the Union, regardless of the Union's position to the contrary. *Id.* [redacted] then "entered down" in the email body and, addressing solely [redacted], asked which days the stewards could meet to discuss the proposed CBA changes. *Id.* In addition, the following day, [redacted] both left [redacted] a voicemail and emailed [redacted] individually to ask whether the stewards would like to meet with management. *Id.*

It was clear to [redacted] that [redacted] was [redacted] in order to force [redacted] to [redacted] Aff. ¶ 22.

ARGUMENT

I. NYPR Abrogated the Parties Collective-Bargaining Agreement.

NYPR engaged in a calculated campaign to abrogate the CBA and undermine the Union's role as the employees' exclusive bargaining agent. Specifically, NYPR: (1) repudiated the parties' grievance and arbitration procedure; (2) dealt directly with employees regarding conditions of employment; and (3) repeatedly denied unit employees their *Weingarten* right to union representation.

A. NYPR Repudiated the Parties' Collective Bargaining Agreement by Refusing to Process Grievances Concerning a Broad Range of Contractual Issues.

An employer's refusal to arbitrate grievances pursuant to a collective-bargaining agreement violates Sections 8(a)(1) and (5) of the Act if the employer's conduct amounts to a unilateral modification or wholesale repudiation of the collective-bargaining agreement. *Cascades Containerboard Packaging-Lancaster*, 367 NLRB No. 115, slip op. at 10 (2019) (citing *Exxon Chemical Co.*, 340 NLRB 357, 357 (2003)). The Board's decision in *Exxon Chemical* is instructive. There, the employer refused to process three grievances regarding severance pay, notice-of-layoffs, and employee benefits, respectively. The Board found that by doing so the employer "unilaterally abandoned or repudiated the contractual grievance-arbitration procedure" and violated Section 8(a)(5). *Exxon Chemical*, 340 NLRB at 359.

The same logic applies here. SAG-AFTRA filed three grievances concerning three separate disputes: (1) [redacted] termination under Article XXI, Section 1(c); (2) [redacted] severance pay under Article XXIII; and (3) NYPR's failure to adhere to the contractual grievance process under Article XXI, Section 1(a). These grievances present distinct issues. Although the termination and severance pay grievances implicate a similar past practice concerning crediting news organizations, *see* [redacted] Aff. ¶ 13, they arise under separate provisions of the CBA. Moreover, the failure-to-adhere grievance focuses on an entirely

different past practice concerning which types of discipline are grievable, *see* [redacted] Aff. ¶ 7, and, again, arises under a separate CBA provision.

Rather than engage in good faith discussions with the Union about these issues, however, NYPR refused to process each one of SAG-AFTRA's grievances. These were the only grievances that SAG-AFTRA filed between [redacted] 2021 and the date it filed the unfair labor practice charge. SAG-AFTRA submitted the [redacted] grievance on [redacted] 2021, nearly [redacted] after the unfair labor practice charge was filed. As was the case with [redacted] grievances, NYPR refused to process the Union's claim that [redacted] did not receive severance pay. Exh. L. Although it agreed to "proceed to a grievance meeting" regarding [redacted] treatment during the investigative process, *id.*, such post-ULP conduct is insufficient to cure NYPR's underlying unfair labor practice. NYPR did not "disavow[its] unlawful conduct," *T-Mobile USA, Inc*., 369 NLRB No. 50, slip op. at 2 (2020), let alone publish such repudiation to the affected employees or provide assurances that, in the future, "their employer will not interfere with the exercise of their [Section] 7 rights." *ExxonMobil Research & Eng'g Co*., 370 NLRB No. 23, slip op. at 6 fn. 17 (2020) (quoting *Passavant Mem'l Area Hosp.*, 237 NLRB 138, 139 (1978)).

NYPR thus did not merely refuse to process one grievance or a single class of grievances. Instead, it rejected several grievances concerning "a range of contractual issues" that represented the entire universe of the parties' pending disputes. *See Exxon Chemical*, 340 NLRB at 359. By refusing to process *any* of SAG-AFTRA's grievances, NYPR abandoned the grievance-arbitration procedure and violated Section 8(a)(5). *Accord 3 State Contractors, Inc.*, 306 NLRB 711, 715 (1992) (refusing to process even two grievances concerning different contractual provisions violates Section 8(a)(5)).

There is no question that SAG-AFTRA's grievances are covered by the CBA's grievance-arbitration provision. Article XXI provides that the term "grievance" shall mean, among other things, a dispute arising out of the "interpretation, application or a claimed violation of this Agreement" or "any appeal of a claimed wrongful disciplinary action." All three grievances fall under this provision. The Union's failure-to-adhere grievance involves the parties' "interpretation" of which disputes are grievable under the CBA. The Union's severance pay grievance alleges that NYPR violated Article XXIII, Section 6 when it failed to provide [redacted] with severance pay. Finally, [redacted] termination grievance involves a dispute arising out of "a claimed wrongful disciplinary action," and NYPR has always accepted grievances regarding an employee's termination regardless of the employee's job category. [redacted] Aff. ¶¶ 7, 20. While NYPR asserted that all three grievances are not covered by the CBA—an argument that flies in the face of the parties' past practice and Article XXVI's explicit command that [redacted] "shall" be subject to the CBA's severance provisions—"this is a contract-interpretation issue to be determined by the arbitrator." *See Exxon*, 340 NLRB at 360. By

refusing to allow an arbitrator to decide these issues, NYPR repudiated the parties' grievance-arbitration procedure in violation of the Act.

The conclusion that NYPR abrogated the CBA is not limited to its refusal to process grievances. Article XXII of the CBA requires NYPR to make "[a]ll efforts" to notify SAG-AFTRA *before* an employee is terminated. Under binding past practice, NYPR is also required to notify SAG-AFTRA *before* the employee may be disciplined or investigated, and such notice must be issued regardless of whether the unit member is an on- or off-air employee. (b) (6), (b) (7)(C) Aff. ¶ 9; (b) (6), (b) (7)(C), (Aff. ¶¶ 6–7. NYPR, however, failed to make *any* effort to provide any notice to the Union of its intent to terminate (b) (6), (b) (7)(C), let alone the significant steps required by Article XXII. (b) (6), (b) (7)(C), Aff. ¶ 9; (b) (6), (b) (7)(C) Aff. ¶ 8. (b) (6), (b) (7)(C), not NYPR, told (b) (6), (b) (7)(C) about (b) (6), (termination meeting. (b) (6), (b) (7)(C), Aff. ¶ 10. Similarly, NYPR ignored the CBA and did not notify the Union about (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) terminations, and SAG-AFTRA learned of the former only because (b) (6), (b) (7)(C) spoke to the Union an hour before the meeting began. (b) (6), (b) (7)(C), Aff. ¶¶ 21, 28; (b) (6), (b) (7)(C), (b) (Aff. ¶¶ 28–29; *see also* (b) (6), (b) (7)(C), (Aff. ¶¶ 9–10 (describing similar incidents involving other unit members). This is further evidence of NYPR's repudiation of the collective bargaining agreement's mandate that the union be involved in employee discipline. Not only did NYPR refuse to process SAG-AFTRA's grievances, it also impeded the Union's ability to determine whether a grievance should be filed in the first place by ignoring its contractual obligation to provide notice. By so doing, it undermined the Union in the eyes of the members.

B. NYPR Engaged in Direct Dealing When It Intentionally Circumvented the Union and Dealt Only with an Unauthorized Bargaining Agent to Discuss Proposed Changes to the CBA.

Direct dealing occurs when: (1) the employer communicates directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union. *El Paso Elec. Co.*, 355 NLRB 544, 545 (2010) (quoting *Permanente Med. Grp.*, 332 NLRB 1143, 1144 (2000)). All three elements are present here. (b) (6), (b) (7)(C) NYPR's (b) (6), (b) (7)(C) , emailed (b) (6), (b) (7)(C), a bargaining unit employee, without copying SAG-AFTRA. (b) (6), (b) (7)(C), (Aff. ¶ 15; Exh. W. This satisfies the first and third elements, as (b) (6), (b) (7)(C) communicated directly with a union-represented employee to the exclusion of SAG-AFTRA.

Further, (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C) with the express purpose of changing the employees' conditions of employment. A few weeks prior to the email, NYPR's (b) (6), (b) (7)(C) , announced that NYPR would begin negotiating with SAG-AFTRA regarding pay freezes and changes to the vacation carryover policy. (b) (6), (b) (7)(C), (Aff. ¶ 11; Exh. 25. Instead of doing this, however, (b) (6), (b) (7)(C) chose to negotiate directly with employees. In (b) (6), (email to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C)

stated that NYPR wanted to discuss the "cost saving measures" in (b) (6), (b) (7)(C) announcement, explicitly referencing the pay freezes and vacation policy. (b) (6), (b) (7)(C), (Aff. ¶ 15; Exh. W. (b) (6), (b) (7)(C) wanted to schedule the meeting so that NYPR could "let our employees know what we are hoping to achieve in terms of vacation carry" and "share our thinking" on why "holding the pay increases for employees making over $100,000" was "important." Exh. X. Thus, as (b) (6), (b admits, (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C) because (b) (6), (wanted to justify NYPR's proposed changes to the CBA. That is flatly prohibited by the NLRA, particularly because it was done in lieu of dealing directly with SAG-AFTRA, as such conduct undercuts SAG-AFTRA's exclusive role as the employees' bargaining representative. *See SPE Util. Contractors, LLC*, 352 NLRB 787, 791 (2008) ("Going behind the back of the exclusive bargaining representative to seek the input of employees on a proposed change in working conditions plainly erodes the position of the designated representative.").

That (b) (6), (b) (7)(C) was a (b) (6), (b) (7)(C) and a (b) (6), (b) (7)(C) does not alter this conclusion.[13] An employer violates Section 8(a)(5) when it deals directly with "any representative other than the designated bargaining agent." *SPE Util. Contractors,* 352 NLRB at 791. As a result, an employer cannot communicate with a (b) (6), (b) (7)(C) for the purpose of changing conditions of employment without a reasonable basis that the (b) (6), (b) (7)(C) is authorized to bargain on the union's behalf. *See, e.g.*, *Ingredion, Inc*., 366 NLRB No. 74, slip op. at 21 fn. 27 (2018) ("I find the fact that Sarchett and King were both union stewards at the time these conversations were held does not serve as a defense to a finding of direct dealing as neither employee had any role in the negotiations."); *Certco Distrib. Ctrs.*, 346 NLRB 1214, 1214 n.5, 1218 (2006) (employer's discussion with chief steward constituted direct dealing).

This is precisely what happened here. SAG-AFTRA has never authorized (b) (6), (b) (7)(C) to negotiate on behalf of the unit. (b) (6), (b) (7)(C), Aff. ¶ 29. Nor has bargaining ever been a part of the permissible activities of the Labor-Management Committee. (b) (6), (b) (7)(C), Aff. ¶ 29; (b) (6), (b) (7)(C), (Aff. ¶ 13. (b) (6), (b) (7)(C), the (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) June 1 email was (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (Aff. ¶¶ 2, 15. Despite the knowledge that the (b) (6), (b) (7)(C) had no authority to bargain on SAG-

[13] Nor does it matter that (b) (6), (b) (7)(C refused to attend (b) (6), (b) (7)(C) proposed meeting. The Act prohibits communications with employees *for the purpose* of changing conditions of employment or undercutting the union's role in bargaining. Because (b) (6), (b) (7)(C) reached out to (b) (6), (b) (7)(C) individually both over voicemail and in email, and (b) (6), (b) (7)(C) own statements show that (b) (6), acted with the purpose of undercutting the union's role as unit employees' designated bargaining representative, (b) (6), communications constitute direct dealing. *See also Modern Merchandising, Inc.*, 284 NLRB 1377, 1379 (1987) (finding that employer's unilateral solicitation of employees by letter itself is likely to erode "the union's position as exclusive representative" and constitutes direct dealing); *Obie Pacific, Inc.*, 196 NLRB 458, 458-59 (1972) (finding that an employer poll of employees itself was direct dealing, regardless of employee responses, for "the question is whether an employer may *attempt* to erode a union's bargaining position by engaging in a direct effort to determine employee sentiment rather than to leave such efforts to the agent of the employees.") (emphasis added).

AFTRA's behalf, NYPR attempted to discuss its bargaining proposals directly with [redacted]. That constitutes direct dealing. *See also Brimar Corp.*, 334 NLRB 1035, 1039 (2001) (rejecting argument that steward's knowledge of a direct dealing violation should be imputed to the union because the steward "was an ordinary production worker with no role in matters relating to bargaining subjects, and [the employer] had no reason to believe otherwise").

Although Article XXXVI states that the Labor-Management Committee can consider changes to employees' working conditions, it specifically provides that the Committee cannot consider matters subject to the grievance procedure set forth in Article XXI. Consistent with the parties' unbroken past practice, SAG-AFTRA clearly communicated to NYPR that the Labor-Management Committee was not authorized to bargain about changes to the CBA. On June 3, Richard Larkin, SAG-AFTRA's Labor Counsel, told [redacted] that the issues [redacted] raised with [redacted] needed to be discussed with SAG-AFTRA rather than with the [redacted]. [redacted] Aff. ¶ 29; Exh. X. Larkin sent a similar email the following day, stating that the Union's position "remains unchanged" and that [redacted] proposed meeting "require[d] that SAG-AFTRA union staff attend and participate." Exh. X. [redacted] made plain that, to the extent NYPR intended to discuss changes to the CBA, it needed to speak with SAG-AFTRA, not the stewards.

Given SAG-AFTRA's clear communications about who it designated to bargain about terms and conditions of employment, NYPR's subsequent attempts to meet with the [redacted] regarding the pay freeze and vacation carryover policy constitute unlawful direct dealing. Nonetheless, that is exactly what [redacted] chose to do. Insisting that NYPR could meet with the [redacted] regardless of SAG-AFTRA's position, [redacted] "entered down" in the email body and, addressing solely [redacted], asked which days the [redacted] could meet to discuss the proposed CBA changes. Exh. X. [redacted] emailed [redacted] separately the next day and again asked whether the [redacted] would like to meet with management to discuss these issues. *Id.* Although [redacted] claimed that the meeting was prompted by the [redacted], *id.*, [redacted] had told [redacted] weeks earlier that the [redacted] no longer wanted to have such a meeting. [redacted] Aff. ¶ 14. [redacted] repeated attempts to discuss the pay freeze and vacation policy—including multiple emails in the previous three days and a voicemail just minutes earlier—evidence [redacted] determination to discuss NYPR's proposed changes to the CBA with the [redacted], rather than with the Union designees, notwithstanding SAG-AFTRA's directions that [redacted] was not to do so. *See* [redacted] Aff. ¶¶ 15–16, 18, 20–21. [redacted] confirmed this fact, explaining that [redacted] was [redacted] and that [redacted] wanted the [redacted] to [redacted] [redacted] Aff. ¶ 22.

This conduct constituted direct dealing. [redacted] in front of an employee, in another blatant attempt to undermine SAG-AFTRA in the eyes of the members, openly disregarded SAG-AFTRA's right to select its bargaining representative. [redacted] then asked that employee, multiple times, to meet on the very issues that the Union had just insisted that only it had the

authority to discuss. By communicating with a "representative other than the designated bargaining agent" for the purpose of changing the employees' conditions of employment and undercutting SAG-AFTRA's role in bargaining, NYPR violated Section 8(a)(5) of the Act. *See SPE Util. Contractors*, 352 NLRB at 788 n.4 (employer engaged in direct dealing when it spoke with the steward because, days earlier, it received notice that it should communicate with the business representative instead).

C. NYPR Interfered with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Selection of Their Chosen Union Representative.

An employer violates Section 8(a)(1) by denying an employee their chosen union representative at an investigatory meeting. Once an employer makes a valid request for union representation, the employer is permitted one of three options. The employer may (1) grant the request, (2) dispense with or discontinue the interview, or (3) offer the employee the choice of continuing the interview unaccompanied by a union representative or have no interview at all. *Roadway Exp., Inc.*, 246 NLRB 1127, 1129 (1979). Although an employer may cancel an interview after an employee makes a valid request for union representation, an employer violates Section 8(a)(1) by interfering with an employee's choice of union representative or by insisting that another union representative represent the employee.

The *Weingarten* right to union representation in investigatory meetings includes a right to choose a specific union representative, if they are available and absent extenuating circumstances. *Anheuser-Busch, Inc.*, 337 NLRB 3, 8-9 (2001), enfd. 338 F.3d 267 (4th Cir. 2003), cert. denied 541 U.S. 973 (2004); *Barnard College*, 340 NLRB 934, 935 (2003) (citing *Anheuser-Busch*, *supra*, and *Pacific Gas & Electric Co.*, 253 NLRB 1143 (1981)). "Where an employee's chosen representative is available, the employer violates Section 8(a)(1) by insisting that another union representative represent the employee." *PAE Applied Technologies*, 367 NLRB No. 105, slip op. at 17-18 (2019) (holding that employer violated Section 8(a)(1) by continually denying an employee the available *Weingarten* representative of their choice, a union attorney); *see also Consol. Coal Co.*, 307 NLRB 976, 978 (1992).

Here, after learning of scheduled meetings with (b) (6), (b) (7)(C) and their supervisors, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) sought out union representation, and chose Mendelsohn, an in-house Union attorney who routinely represents members in disciplinary meetings, to serve as their union representative. (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 11; (b) (6), (b) (7)(C), Aff. ¶¶ 10-11; Exh. R.[14] Lieber, NYPR's outside

[14] A meeting is investigatory for the purposes of triggering an employee's *Weingarten* right if the employee "reasonably believes the investigation will result in disciplinary action." *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 257 (1975). Here, there is no doubt that these meetings were investigatory. (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C), told (b) (6), (b) (7)(C) that the meetings were being held because (b) (6), (b) (7)(C) disapproved of the employees' conduct during the (b) (6), (b) (7)(C) meeting. (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶ 10. (b) (6), (b) (7)(C) supervisor confirmed that the

attorney, stated in response that only a shop steward, not Mendelsohn, could attend these meetings with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Exh. R.

In so doing, NYPR unlawfully insisted on conducting the meetings without the members' preferred representative in violation of Section 8(a)(1). *PAE Applied Technologies*, 367 NLRB, slip op. at 17-18. NYPR's subsequent decision to cancel the meetings failed to remedy this unlawful interference. *Westside Cmty. Mental Health Center, Inc.*, 327 NLRB 661, 666 (1999) (affirming ALJ finding that employer's unlawful refusals to permit union representatives at investigatory interviews were not effectively remedied by employer's later admission that those interviews were unlawful); *Passavant Mem'l Hosp.*, 237 NLRB 138 (1978) (holding that a repudiation of an unfair labor practice must be timely, unambiguous, specific, and untainted by other unlawful conduct). NYPR never acceded to Larkin's position that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were allowed to have their chosen representative present. Exh. R. Particularly in the context of all their other anti-union activity, absent NYPR's repudiation of their unlawful conduct, their violation remains unremedied.

D. NYPR Denied Olivares a Union Representative for an Investigatory Meeting.

Employees have a right to a union representative as soon as they have a reasonable belief that a meeting with their employer may result in disciplinary action. *Amoco Oil Co.*, 278 NLRB 1, 8 (1986); *NLRB v. J. Weingarten*, 420 U.S. 251, 257 (1975).

(b) (6), (b) (7)(C) requested union representation prior to (b) (6), (b) (7)(C) meeting with (b) (6), (b) (7)(C) on May 27. (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶ 17; Exh. U. Based on (b) (6), (b) (7)(C) altercation with (b) (6), (b) (7)(C) during the May 20 meeting, as well as (b) (6), (b) (7)(C) coworker's agreement that the meeting was likely about that altercation, (b) (6), (b) (7)(C) had a reasonable belief that the meeting could have disciplinary consequences. (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶ 16. After all, NYPR's "Norms and Behaviors" policy requires employees to refrain from "disrespectful . . . behaviors," and (b) (6), (b) (7)(C) himself had called (b) (6), (b) (7)(C) "disrespectful" at the May 20 meeting. Exh. O; (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶ 12.

(b) (6), (b) (7)(C) denied (b) (6), (b) (7)(C) request for union representation, emphasizing that the meeting was only for (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶ 18; Exh. U. Yet during the meeting, (b) (6), (b) (7)(C) began to discuss NYPR's interest in finding out which employee at (b) (6), (b) (7)(C) had spoken out about the hostile work environment at (b) (6), (b) (7)(C) and the ongoing HR investigation. (b) (6), (b) (7)(C) threatened that if they found out, NYPR would be having a (b) (6), (b) (7)(C), (b) (7)(D) with the employee who had (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(C) Aff. ¶ 22.

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employees' conduct during the (b) (6), (b) (7)(C) meeting was the impetus behind the scheduled meetings. (b) (6), (b) (7)(C) Aff. ¶ 9. Both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) reasonably concluded that these meetings—scheduled with their supervisors and the (b) (6), (b) (7)(C) —could result in questioning that, in turn, could lead to discipline.

This conduct made it clear that the meeting was investigatory, albeit for reasons other than what (b) (6), (b) (7)(C) expected. If (b) (6), (b) (7)(C) had volunteered that (b) (6), (b) (7)(C) had spoken to coworkers in the newsroom about the investigation, (b) (6), (b) (7)(C) statements made clear that (b) (6), would then be having another "conversation" with NYPR management—implicitly threatening discipline. *See Yale New Haven Hosp.*, 309 NLRB 363, 368 (1992) (finding that supervisor unlawfully threatened employee with reprisal by telling him that if he did not stop protected activities he would "talk" to him again).

Moreover, the record strongly suggests that (b) (6), (b) (7)(C) planned on discussing employee breaches of confidentiality at the meeting. Despite (b) (6), (b) (7)(C) statement that the meeting was intended to address (b) (6), (b) (7)(C) "feedback and concerns," (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C) to schedule this meeting on May 26, a week after (b) (6), (b) (7)(C) staff meeting on May 20, but only three days after the publication of the *Times* article about internal disputes at NYPR. Exh. U; (b) (6), (b) (7)(C), (b) (Aff. ¶ 12-13, 15. (b) (6), (b) (7)(C) had emailed (b) (6), (b) (7)(C) and (b) (6), (b) (7)(about NYPR's response to the *Times* article on May 23. (b) (6), (b) (7)(C) had also been one of the three original complainants in the HR investigation, and it is reasonable to assume that (b) (6), (b) (7)(C) thought that (b) (6), (b) (7)(C) was one of the members of the (b) (6), (b) (7)(C) team most likely to speak with (b) (6), (b) (7)(C), the author of the *Times* article. (b) (6), (b) (7)(C), (b) (Aff. ¶ 5. Indeed, the only other individuals with whom (b) (6), (b) (7)(C) had scheduled a meeting that week were the other two complainants from (b) (6), (b) (7)(C). (b) (6), (b) (7)(C), (b) (Aff. ¶ 20.

(b) (6), (b) (7)(C) asked, based on reasonable grounds and in the context of NYPR's anti-union activity, for a union representative. This request was denied, even though the meeting scheduled was both likely planned to be investigatory and became investigatory shortly after it began. Employees have no obligation to repeat their desire for a union representative once they have invoked the right to *Weingarten* representation if that request was made to the person conducting the meeting prior to the meeting. *Consol. Freightways Corp.*, 264 NLRB 541, 542 (1982); *Lennox Inds.*, 244 NLRB 607, 608 (1979). Therefore, NYPR violated Section 8(a)(1) by denying (b) (6), (b) (7)(C) a union representative for the May 27 meeting with (b) (6), (b) (7)(C) and undermining the Union's role as an advocate for employees in disciplinary settings.

II. NYPR Engaged in a Pervasive Campaign to Chill Protected Activities Through Discharges, Threats, Intimidation, Warnings, and Surveillance.

A. Employees Engaged in Protected Concerted Activity Throughout the Spring of 2021 to Voice Their Group Complaints Regarding Job Security, Benefit Cuts, and Workload.

Section 7 of the Act provides employees with the right "to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection[.]" 29 U.S.C.

§ 157. An individual bringing a group complaint to the attention of management is engaged in protected concerted activity. *Alstate Maintenance, LLC*, 367 NLRB No. 68, slip op. at 7 (Jan. 11, 2019); *Meyers Inds., Inc. (Meyers II)*, 281 NLRB 882, 887 (1986). Moreover, discussions of pay and job security, including "whether and under what circumstances employees will be discharged or laid off, and with what procedural protections," and other "vital elements of employment" are inherently concerted. *Automatic Screw Prods. Co.*, 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992) (pay); *Hoodview Vending Co.*, 359 NLRB 355, 357 (2012), incorporated by reference, 362 NLRB 690 (2015) (job security); *Component Bar Prods., Inc.*, 364 NLRB No. 140, slip op. at 1 fn. 1 (2016) (same).

The critiques of NYPR management posed by (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) at all-staff meetings throughout the spring of 2021 were textbook group complaints shared by the newsroom as a whole and, as such, constituted protected concerted activity. Unlike in *Alstate Maintenance*, a case involving a single employee complaint, NYPR employees' repeated questions to (b) (6), (b) (7)(C) at the (b) (6), (b) (7)(C) all-staff meeting about whether (b) (6), (b) (7)(C) termination resulted from (b) (6), use of AP copy—an employment issue they all shared—demonstrate that (b) (6), (b) (7)(C) together with (b) (6), co-workers, was "bringing a truly group complaint to the attention of management[.]" *Alstate Maintenance*, 367 NLRB No. 68, slip op. at 4. In contrast to *Alstate*, the February 10 petition organized by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) with sixty employee signatures, numerous employees' repeated questions about (b) (6), (b) (7)(C) termination during the all-staff meeting, and the emails sent by (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) to the entire newsroom questioning the termination all provide ample evidence of the group nature of this complaint. The same is true for the all-staff meeting on (b) (6), (b) (7)(C) Multiple employees, including (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), asked why employee benefits were cut without evidence of significant executive pay cuts.

Moreover, the subjects of these employees' questions were themselves inherently protected and concerted. Employees' concerns about what (b) (6), (b) (7)(C) did to justify termination—and their arguments about the newsroom's past practice of using AP copy—ultimately concerned their own terms of employment, job security, and whether they would be fired for doing what (b) (6), (b) (7)(C) did. *Hoodview Vending*, 359 NLRB at 357. Likewise, employees at the all-staff meeting on (b) (6), (b) (7)(C) again and again, asked why their merit increases and vacation carryover benefits—vital elements of their employment in the talent industry—were being cut, while executive pay was not. *See* Memorandum GC 21-03, Office of the General Counsel, Effectuation of the National Labor Relations Act Through Vigorous Enforcement of the Mutual Aid or Protection and Inherently Concerted Doctrines at 5 (Mar. 31, 2021) ("Employee discussions of certain 'vital elements of employment' often raise concerns that are pivotal to their collective interests, which, in some circumstances, may spur organizational considerations. Concern about these crucial common issues may render group discussions inherently concerted, 'even if group action is nascent or not yet contemplated.").

NYPR employees also engaged in protected concerted activity on social media. (b) (6), (b) (7)(C) tweet on March 1 (b) (6), (b) (7)(C), (b) (7)(D) was in reaction to the work conditions at NYPR: long workdays, rigid deadlines, and against the backdrop of previous complaints (b) (6), (b) (7)(C) had made about employee workload during the pandemic, (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), Aff. ¶¶ 3-4; *Triple Play Sports Bar and Grille*, 351 NLRB 308, 310 (2014). Further, three NYPR employees liked (b) (6), (b) (7)(C) tweet, thereby designating (b) (6), to speak on their behalf about workplace issues at NYPR.[15] *Triple Play*, *supra* (affirming ALJ's finding that employee's "like" of another employee's Facebook status regarding employer's tax withholding practices, and an employee's comment on that status, was concerted activity); *Bettie Page Clothing*, 361 NLRB 876 (2014), reaff'g 359 NLRB 777 (2013) (holding that two employees' Facebook posts complaining about their supervisor were protected concerted activity in themselves and as an extension of their prior discussions with their supervisor about working conditions). *Cf. Chipotle Servs. LLC*, 364 NLRB No. 72, slip op. at 1 fn. 3 (finding that tweets *without* any other employee engagement were not concerted activity).

B. NYPR Violated Sections 8(a)(3) and (1) of the Act by Terminating and Disciplining Employees for Engaging in Protected Concerted Activity.

Section 8(a)(3) of the Act prohibits encouraging or discouraging union membership "by discrimination in regard to hire or tenure of employment or any term or condition of employment." 29 U.S.C. § 158(a)(3). Generally, to establish an 8(a)(3) violation, the General Counsel must show that an employee's protected conduct was a motivating factor in the employer's decision to discharge or discipline that employee. *See Wright Line*, 251 NLRB 1083, 1089 (1980). The General Counsel establishes a prima facie 8(a)(3) case by demonstrating that: (1) the employee engaged in protected activity; (2) the employer knew of the protected activity; and (3) the employer took adverse action against the employee based on the protected activity. *See, e.g.*, *Am. Gardens Mgmt. Co.*, 338 NLRB 644, 645 (2002). Once that showing is made, the burden shifts to the employer to demonstrate that it would have taken the same action in the absence of the protected conduct. *Tschiggfrie Props., Ltd.*, 368 NLRB No. 120, slip op. at 3 (2019).

Adverse actions under Section 8(a)(3) include counselings or warnings, even if verbal, where they "are part of a disciplinary process in that they lay 'a foundation for future disciplinary action against [the employee].'" *Promedica Health Systems*, 343 NLRB 1351, 1351 (2004)

[15] (b) (6), (b) (7)(C) (Mar. 1, 2021 at 12:56 A.M.), (b) (6), (b) (7)(C) (showing that (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) liked (b) (6), (b) (7)(C) tweet).

(quoting *Trover Clinic*, 280 NLRB 6, 16 (1986), enfd. in rel. part 206 Fed. App'x 405 (6th Cir. 2006), cert. denied 127 S. Ct. 2033 (2007); *see also Altercare of Wadsworth Center for Rehabilitation*, 355 NLRB 565, 566 (2010) (holding that verbal warnings were discipline when supervisor would likely remember the warnings in the future, even if not documented in the employee's personnel file). This definition of "discipline" applies to any form of informal warning or reprimand of an employee. *See, e.g.*, *Mitsubishi Hitachi Power Sys. Americas, Inc*., 366 NLRB No. 108, slip op. at 6, 16 & fn. 31 (June 18, 2018) (applying *Promedica* and progeny to the context of an informal, written disciplinary notice issued to an employee).

Proof of animus and discriminatory motivation may be based upon direct evidence or inferred from circumstantial evidence. *Robert Orr/Sysco Food Servs., LLC*, 343 NLRB 1183, 1184 (2004); *Tschiggfrie Properties, Ltd*., 368 NLRB No. 120, slip op. at 8 (2019) (clarifying General Counsel's *Wright Line* burden where motive is at issue). Animus can also be inferred from the close timing between an employee's protected concerted activity and her discipline or the respondent's disparate treatment of the employee. *BS&B Safety Sys., LLC*, 370 NLRB No. 90, slip op. at 1–2 (2021) (disparate treatment); *Mountain View Care and Rehabilitation Center*, LLC, 368 NLRB No. 128, slip op. at 1 fn. 1 (2019) (disparate treatment); *Robert Orr*, 343 NLRB at 1194 (timing).

Pretextual reasons for discipline—reasons that are either false or not in fact relied upon—also indicate unlawful motivation. *See, e.g.*, *Electrolux Home Products, Inc.*, 368 NLRB No. 34, slip op. at 3 (2019). An employer does not defeat a prima facie Section 8(a)(3) case if the evidence establishes that its stated reasons for the discipline are pretextual. *Active Transp.*, 296 NLRB 431, 432 fn. 8 (1989) (citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 929, 938 (9th Cir. 1966)). Upon a showing that the employer has advanced a pretextual business reason for its action, "the employer has not met its burden and the inquiry is logically at an end." *Thermon Heat Tracing Servs., Inc.*, 320 NLRB 1035, 1038 (1996).

However, "[w]here an employer defends disciplinary action based on employee conduct that is part of the res gestae of the employee's protected activity, *Wright Line* is inapplicable. This is because the causal connection between the protected activity and the discipline is not in dispute." *Entergy Nuclear Operations, Inc.*, 367 NLRB No. 135, slip op. at 1 fn. 1 (2019) (quoting *Roemer Industries, Inc*., 362 NLRB 828, 834 fn. 15 (2015), enfd. 688 Fed. App'x 340 (6th Cir. 2017)). In such a case, the only question is whether the disciplined employee's conduct was protected by the Act. *Roemer Industries*, 362 NLRB at 834 fn. 15.

1. Termination of (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) was first hired as (b) (6), (b) (7)(C) and subsequently became a (b) (6), (b) (7)(C) at NYPR. (b) (6), (both (b) (6), (b) (7)(C) (b) (6), (own stories and (b) (6), (b) (7)(C) Gothamist and radio reporters'

stories [redacted] Aff. ¶ 1. [redacted] frequently spoke out with and on behalf of [redacted] coworkers about workplace conditions and NYPR management. [redacted] Aff. ¶¶ 11-13. [redacted] was one of several employees who publicly criticized [redacted] handling of [redacted] termination on [redacted], noting that if [redacted] conduct [redacted] was dismissive of and irritated with [redacted], especially in comparison to [redacted] responses towards other employees during that meeting. [redacted] Aff. ¶ 16; Exh. Z at 15:50-17:26. Soon after, [redacted] and the other [redacted] drafted a letter with over sixty employee signatories to protest [redacted] firing, which they sent to [redacted] Aff. ¶¶ 20-21; Exh. N.

[redacted] was not only an employee who spoke out about workplace conditions, but an active union member and supporter. [redacted] was [redacted] in December 2019. [redacted] Aff. ¶ 6. [redacted]. As recently as [redacted] 2021, five days before [redacted] termination, [redacted] was organizing [redacted] coworkers to present employee complaints about the workload at the next meeting of the Labor-Management Committee. [redacted] Aff. ¶ 26.

[redacted] was an open and notorious union supporter and advocate for [redacted] coworkers. Employer representatives knew of each occasion in which [redacted] spoke out with or on behalf of [redacted] coworkers, [redacted] Aff. ¶¶11-13, 16, 20-21, and interacted directly with [redacted] in [redacted] role as shop steward. [redacted] Aff. ¶¶ 6, 11.

NYPR terminated [redacted] on [redacted] 2021. [redacted] Aff. ¶ 30. At [redacted] termination meeting over Zoom with [redacted] Freed, [redacted] and Josh Mendelsohn, SAG-AFTRA counsel, [redacted] told [redacted] that management had [redacted] Aff. ¶ 30.

NYPR's stated reason for [redacted] termination—the lack of need for individuals who [redacted]—is clearly pretextual. At a May 13, 2021 meeting with [redacted], [redacted] told [redacted] that it [redacted] Aff. ¶ 19. Despite [redacted] assertion that the company had no other role for [redacted], a recruiter for the Employer recently told [redacted] to apply for a position at NYPR, because [redacted] Aff. ¶ 32. [redacted] had no disciplinary or work performance issues prior to [redacted] termination. [redacted] Aff. ¶ 9. NYPR trusted [redacted] with high-profile assignments, [redacted] Aff. ¶¶ 3, 7, and [redacted] received commendations for [redacted]

work both from [redacted] direct supervisor and [redacted] as recently as December 2020. [redacted] Aff. ¶¶ 9-10. Consistent with the conclusion that NYPR in fact needed [redacted] role to be filled at the time of [redacted] termination, NYPR hired a new [redacted] for the newsroom shortly after [redacted] was fired. [redacted] Aff. ¶ 33.

Further, NYPR treated [redacted] termination differently from other employees who lost their jobs on [redacted] suggesting that [redacted] termination was motivated by animus. NYPR immediately removed [redacted] access to [redacted] work email and Slack channels and refused [redacted] access to the office building to return work-related equipment, instead requiring [redacted] to stay on the street. [redacted] Aff. ¶ 31. This access was removed despite [redacted] project, which [redacted] had not completed at the time [redacted] was terminated. [redacted] Aff. ¶ 30. Other employees laid off on [redacted], including [redacted] and [redacted], retained access to NYPR's systems to complete ongoing projects. [redacted] Aff. ¶ 12. This disparate treatment underscores the conclusion that the reasons given by NYPR for [redacted] termination were pretextual.

Finally, a finding of unlawful motivation behind [redacted] termination is bolstered by the strong, direct evidence of anti-union animus at NYPR. [redacted] comment to [redacted] about the Union ("the union has a shitty contract and they don't concern me. I don't care what the union thinks, and I can do what I want"), [redacted] monitoring of employees' communications with the Union, and [redacted] oversight of a reign of intimidation and coercion evince [redacted] disregard for employees' contractual and statutory rights. *See infra* Part II.C-D.

For these reasons, [redacted] termination on [redacted], 2021, viewed either alone or in the context of NYPR's concerted anti-union campaign, violated Sections 8(a)(3) and (1) of the Act.

2. Written Discipline of [redacted] and [redacted]

Both [redacted] and [redacted] engaged in protected concerted activity during an all-staff meeting called by NYPR on [redacted]. *See supra* Part II.A. Both spoke out or, in [redacted] case, made a visual demonstration, in a group setting expressing agreement with their coworkers' complaints about NYPR's announced layoffs and mid-term modification of their collective bargaining agreement.

[redacted] emails to both [redacted] and [redacted] on [redacted] reprimanding them for their protected concerted activity similarly constitute adverse action for the purposes of Section 8(a)(3). Both emails establish a standard of expected conduct in the workplace that [redacted] judged [redacted] and [redacted] to have fallen below and which could lay a foundation for future disciplinary action. *Promedica Health Systems*, 343 NLRB 1351, 1351 (2004); *Mitsubishi Hitachi Power Sys. Americas Inc*., 366 NLRB No. 108, slip op. at 6, 16 & fn. 31 (2018). Both emails from [redacted] to [redacted] and [redacted] stated that they are communicating "workplace

values[,]" what NYPR "expect[s]" of "all employees[,]" and that their conduct was "not appropriate in the workplace." Exh. S; Exh. T. As (b) (6), (b) (7)(C) wrote to (b) (6), (b) (7)(C): "[NYPR's] expectation is that you will show the same respect to others in the future that was shown to you during the meeting." Exh. T.

An employee could reasonably assume that (b) (6), (b) (7)(C) emails constituted discipline. The emails followed shortly after an initial Zoom invite was sent to meet with (b) (6), (b) (7)(C) and the employee's supervisor and communicated expectations paralleling those found in NYPR's "Norms and Behaviors" policy. *See* Exh. O ("We do not . . . engage in disrespectful or aggressive or passive-aggressive behaviors . . . ."); *Shamrock Foods Co.*, 366 NLRB No. 107, slip op. at 13 (2018) (finding that verbal warning in meeting with supervisor constituted discipline, as "an employee could reasonably assume that they were being disciplined").

(b) (6), (b) (7)(C) sent (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) emails to communicate NYPR's disapproval of their conduct at the (b) (6), (b) (7)(C) meeting, i.e., their protected concerted activity. Therefore, causation is not in dispute, and unlawful motive is established. *Roemer Industries*, 362 NLRB at 834 fn. 15. Moreover, even if motive was in dispute, there is ample evidence of unlawful anti-union motives at NYPR, evidenced by (b) (6), (b) (7)(C) termination, (b) (6), (b) (7)(C) comment to (b) (6), (b) (7)(C) about the Union ("the union has a shitty contract and they don't concern me. I don't care what the union thinks, and I can do what I want"), (b) (6), (b) (7)(C) monitoring of employees' communications with the Union, and (b) (6), (b) oversight of a reign of intimidation and coercion. *See infra* Part II.C-D.

Accordingly, NYPR violated Sections 8(a)(3) and (1) by sending both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) written emails to discipline them in response to their conduct during the all-staff meeting on (b) (6), (b) (7)(C) 2021.

3. Verbal Discipline of Pereira

On March 1, (b) (6), (b) (7)(C) sent a tweet about "burnout" that three NYPR unit employees, including two union shop stewards, liked, evincing a concerted effort to communicate about working conditions at NYPR. *See supra* Part II.A. In response to (b) (6), (b) (7)(C) protected activity in the early morning of March 1, *see* Part II.A, (b) (6), (b) supervisor scheduled a meeting where (b) (6) communicated that (b) (6), (b) (7)(C) thought the tweet violated NYPR's "Norms and Behaviors" policy. (b) (6), (b) (7)(C), (b) Aff. ¶ 6. On March 3, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) directly that "(b) (6), (b) (7)(C), (b) (7)(D) [redacted]" *Id.* ¶ 10.

(b) (6), (b) (7)(C) both directly and indirectly through (b) (6), (b) (7)(C) supervisor, communicated to (b) (6), (b) (7)(C) that (b) (6), (b) tweet breached NYPR's expectations of employee conduct. By doing so, (b) (6), (b) laid a foundation for future disciplinary action by establishing a standard of conduct that (b) (6), (b) (7)(C) should follow. Moreover, verbal warnings constitute discipline if a disciplining supervisor would remember the warning in the future. *Altercare of Wadsworth Center for Rehabilitation*,

355 NLRB 565, 566 (2010). (b) (6), (b) (7)(C) received this verbal reprimand not only from (b) (6), (b) (7)(C), but from the (b) (6), (b) (7)(C) of WNYC. A reasonable employee would conclude that when a high-level supervisor communicates that expectations of conduct have been breached, that employee is being disciplined and that that same supervisor would likely remember this communication if the employee acted similarly in the future. *Shamrock Foods Co.*, *supra*, slip op. at 13.

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) reprimanded (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) Twitter activity, *i.e.*, (b) (6), (b) (7)(C) protected concerted activity. Therefore, causation is not in dispute, and unlawful motive is established. *Roemer Industries*, *supra* at 834 fn. 15. Moreover, even if motive was in dispute, there is ample evidence of unlawful anti-union motives at NYPR, evidenced by (b) (6), (b) (7)(C) termination, (b) (6), (b) (7)(C) comment to (b) (6), (b) (7)(C) about the Union ("the union has a shitty contract and they don't concern me. I don't care what the union thinks, and I can do what I want"), (b) (6), (b) (7)(C) monitoring of employees' communications with the Union, and (b) (6), (b) (7)(C) oversight of a reign of intimidation and coercion. *See infra* Part II.C-D.

In short, viewed either alone or as part of NYPR's concerted effort to suppress protected concerted activity, NYPR violated Sections 8(a)(3) and (1) by verbally reprimanding (b) (6), (b) (7)(C) in response to (b) (6), (b) (7)(C) protected concerted activity on March 1.

C. NYPR Violated Section 8(a)(1) by Interfering with Employees' Protected Concerted Activity.

Section 8(a)(1) prohibits conduct that reasonably tends to interfere with employees' exercise of Section 7 activity. 29 U.S.C. § 158(a)(1); *Naomi Knitting Plant*, 328 NLRB 1279, 1280 (1999) (citing *Williamhouse of California, Inc.*, 317 NLRB 699, 713 (1995)); *Space Needle, LLC*, 362 NLRB 35, 38 (2015) (finding that supervisor's statement would reasonably tend to coerce an employee's Section 7 rights, even if not amounting to an unlawful interrogation). An employer's motive is irrelevant. *Yoshi's Japanese Rest., Inc*., 330 NLRB 1339, 1339 fn. 3 (2000).

An employer may not interfere with an employee's protected concerted activity through an adverse employment action like discipline or discharge. *Meyer I*, 268 NLRB 493, 497 (1984). However, an employer also may not interfere with an employee's exercise of Section 7 rights by threatening reprisal, even if unspecified or implied. *Valerie Manor, Inc.*, 351 NLRB 1306 (2007) (threat of unspecified reprisal); *Equip. Trucking Co., Inc.*, 336 NLRB 277 (2001) (implied threat); *see also Benesight, Inc.*, 337 NLRB 282, 283-84 (2001) (finding statement to employee linking her unlawful discharge to her protected activity independently violated Section 8(a)(1) separate and apart from the discharge itself).

NYPR took direct and adverse action to interfere with employees' rights to engage in protected concerted activity. (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) were all reprimanded for engaging in protected concerted activity. Even if their reprimands did not amount to disciplinary action, they would reasonably tend to interfere with the exercise of their Section 7 rights, by chilling employee speech in all-staff meetings and dissuading employees from using social media to air group complaints about working conditions.

Likewise, (b) (6), (b) (7)(C) threatened (b) (6), (b) (7)(C) in (b) (6), meeting with (b) (6), on May 27 that once NYPR found out which (b) (6), (b) (7)(C) employee spoke to their coworker in the newsroom about the HR investigation into the alleged hostile work environment at (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7) Aff. ¶ 22. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (7)(D) [redacted] *Id*. Indeed, this statement implied that such a "conversation" would not be mere talk but would concern the employment of the offending employee who discussed workplace conditions with their coworker. *See Yale New Haven Hosp.*, 309 NLRB 363, 368 (1992) (finding that supervisor unlawfully threatened employee with reprisal by telling him that if he did not stop protected activities he would "talk" to him).

(b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) written and verbal reprimands, (b) (6), (b) (7)(C) warning, (b) (6), (b) (7)(C) recitation of (b) (6), (b) (7)(C) personnel file, and (b) (6), (b) (7)(C) termination tell NYPR employees that protected concerted activity likely will be met with an immediate reprisal from NYPR management. For these reasons, NYPR violated Section 8(a)(1) by interfering with the Section 7 rights of (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) through discharge and discipline of employees and threats of reprisal.

D. NYPR Violated Section 8(a)(1) by Creating the Impression of Surveilling Employees' Protected Concerted Activity.

An employer violates Section 8(a)(1) by surveilling, or creating the impression of surveilling, employees' protected concerted activities. The test to determine whether unlawful surveillance or the impression of surveillance has occurred depends upon whether, under the circumstances, the conduct would tend to interfere with, restrain, or coerce employees' exercise of Section 7 rights. *Broadway*, 267 NLRB 385, 400 (1983). An impression of surveillance is created if an employee would reasonably assume from the employer's statement that their protected concerted activities had been surveilled. *See Deep Distribs. of Greater N.Y.*, 365 NLRB No. 95 (2017), enf'd, 740 Fed. App'x 216 (2d Cir. 2018); *Golden State Foods Corp.*, 340 NLRB 382 (2003) (holding that supervisor's comment that "eyes are on you and you need to watch your step" to pro-union employee created impression of surveillance in violation of the Act).

A supervisor's comment regarding an employee's protected activity, without any indication of the source of their knowledge of that conduct, can create an impression of surveillance. *Promedica Health Sys., Inc.*, 343 NLRB 1351, 1352 (2004). Likewise, a supervisor's conduct that is "out of the ordinary" may give an impression of surveillance. *Grill Concepts Servs., Inc.*, 364 NLRB No. 36, slip op. at 16-17 (2016) (finding that supervisor acted "out of the ordinary" by visiting Union's public Facebook page to view protected activity, then informing the employee who had engaged in protected activity that the supervisor viewed the page and was surprised by the employee's union affiliation); *Advancepierre Foods, Inc.*, 366 NLRB No. 133 (2018) (finding that employer unlawfully surveilled by examining union sympathizer's Facebook page).

Multiple incidents throughout the spring of 2021 created the impression that NYPR was surveilling protected concerted activity and indicated that NYPR was in fact engaging in surveillance. Only hours after (b) (6), (b) (7)(C) Twitter post about workload burnout, [redacted] supervisor informed [redacted] that (b) (6), (b) (7)(C) thought the post may have violated NYPR's "Norms and Behaviors" policy. [redacted] Aff. ¶ 6. Mere minutes after (b) (6), (b) (7)(C) posted a tweet responding to an email sent by (b) (6), (b) (7)(C) to all employees, [redacted] supervisor, (b) (6), (b) (7)(C), told [redacted] to refrain from (b) (6), (b) (7)(C), (b) (7)(D) [redacted] employer and that (b) (6), (b) (7)(C), (b) (7)(D) [redacted] [redacted] Aff. ¶ 6. Supervisors at NYPR reacted to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) tweets within a short time of their posts, suggesting that they—or someone at NYPR—were monitoring employee posts on social media. (b) (6), (b) (7)(C) statement to (b) (6), (b) (7)(C), that (b) (6), (b) (7)(C), (b) (7)(D) [redacted] confirms this conclusion. Given that (b) (6), (b) (7)(C) post was itself protected concerted activity, *see* Section II.A, and that NYPR employees would likely use social media in the future to discuss workplace conditions, such surveillance and the impression of such surveillance reasonably tends to interfere with NYPR employees' Section 7 rights.

Further, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) in a meeting on May 13 that (b) (6), (b) (7)(C), (b) (7)(D) [redacted] and that [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted] [redacted] Aff. ¶ 20. [redacted] not only emailed the entire newsroom and NYPR management on the day of (b) (6), (b) (7)(C) termination to express concerns about [redacted] firing, but joined Zoom calls to discuss worries that (b) (6), (b) (7)(C) had been fired for conduct that many in the newsroom had done themselves, met with (b) (6), (b) (7)(C) and ten coworkers to voice complaints about workload and (b) (6), (b) (7)(C) leadership in March, and announced at a Union meeting in early May after the layoffs that [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted] *Id.* ¶¶ 11, 14-17. (b) (6), (b) (7)(C) statement to [redacted]—and its ominous invocation of "people" that [redacted] heard from—suggested both that [redacted] had been monitoring (b) (6), (b) (7)(C) protected union and concerted activities, and that [redacted] should stop engaging in such activities in the future. Likewise, one manager's statement to a unit member that [redacted] had to "tell

(b) (6), (b) (7)(C) that the employee was seeking SAG-AFTRA's advice further created an impression of surveillance of protected activity at NYPR. (b) (6), (b) (7)(C), (Aff. ¶ 4.

These statements created the impression that supervisors at NYPR were surveilling protected activity. NYPR therefore violated Section 8(a)(1).

E. NYPR Maintains and Enforces Unlawful Work Rules.

1. NYPR's Rule That Limits Employee Feedback to Official, Internal Channels is Unlawful.

In *The Boeing Co.*, 365 NLRB No. 154 (2017), the Board set forth a new analytical framework to determine whether facially neutral rules violate Section 8(a)(1). Under *Boeing*, the Board must determine whether the facially neutral rule, "when reasonably interpreted, would potentially interfere with the exercise of NLRA rights." To make this determination, the Board applies a balancing test, "focusing on the perspective of employees," to decide whether the "nature and extent of the potential impact on NLRA rights" outweighs the "legitimate justifications associated with the rule." *Id.*, slip op. at 3.

Here, NYPR maintains workplace standards in a document known as "Norms and Behaviors." (b) (6), (b) (7)(C), (Aff. ¶ 7; Exh. O. These standards were revised under (b) (6), (b) (7)(C) leadership. *Id*. ¶ 7. Under a subsection entitled, "Constructive Feedback," NYPR requires employees to "provide candid feedback to management on internal workplace issues using official internal channels" (the "Feedback Rule"). Exh. O. This rule is unlawful under *Boeing*.

Under the Feedback Rule, employees are required to use "official" and "internal" channels to discuss "workplace issues" with management. A reasonable employee would interpret this rule to mean that, if they want to raise an issue about their employment, they must do so *within* NYPR and through *formal* channels; in other words, by going to human resources. Such an interpretation is especially reasonable at NYPR, a workplace in which WNYC's (b) (6), (b) (7)(C) [redacted] expects to be informed when employees complain to the Union, (b) (6), (b) (7)(C), (Aff. ¶ 4, and wants complaints to be "direct, [] not indirect" (b) (6), (b) (7)(C Aff. ¶ 20.

This obligation imposes a significant burden on employees' Section 7 rights. It is well settled that employees have a right to discuss their working conditions with each other and their union representatives. Under the Feedback Rule, however, this type of concerted activity is forbidden. The rule does not contain any accompanying language that suggests communications with SAG-AFTRA are exempt. Rather, its focus on "internal" channels makes clear that raising a workplace issue through the Union is prohibited. Such rules are unlawful. *See Nw. Rural Elec. Coop.*, 366 NLRB No. 132, slip op. at 21 (2018) (affirming ALJ's conclusion that requiring

employees to resolve complaints through the employer's "problem solving procedure" interferes with their Section 7 rights because a reasonable employee would believe that they were prohibited from using other methods to discuss their working conditions).

There is no legitimate justification for restricting an employee's communications to human resources. The Feedback rule does not increase productivity, protect NYPR's confidential information, or otherwise prevent disruption in the workplace. Rather, its sole effect is to further erode SAG-AFTRA's role as the employees' exclusive bargaining representative. Given its significant impact on Section 7 rights—and given that "there is no legitimate business justification" for a workplace rule that can be "reasonably construed to preclude communications with union representatives"—the Feedback Rule is unlawful. *See Stericycle, Inc.*, 2020 WL 5353967 (N.L.R.B. Div. of Judges Sept. 4, 2020).

2. NYPR's Investigative Confidentiality Rule is Unlawful.

Investigative confidentiality rules are analyzed under the *Boeing* standard. *Apogee Retail LLC*, 368 NLRB No. 144 (2019). An employee would reasonably interpret a rule that is silent with regard to the duration of a confidentiality requirement as *not* being limited to the duration of the investigation. *Id.* Accordingly, confidentiality rules are subject to a balancing test if they are "not limited on their face to open investigations." *Id.* (emphasis added).

Here, NYPR's confidentiality rule is not limited to the duration of the investigation. [redacted], complained to NYPR regarding the [redacted] alleged misconduct. [redacted] Aff. ¶¶ 1, 5. NYPR investigated [redacted] claim. [redacted] Aff. ¶ 7. In a subsequent email, NYPR stated its confidentiality policy: "Please keep the fact that we are conducting an investigation confidential, so that we can protect the integrity of the process." Exh. V; *see also* [redacted] Aff. ¶ 22 ([redacted] oral description of the confidentiality policy). Because NYPR's policy is not, "on [its] face," limited to the length of the investigation, it is unlawful unless its legitimate justifications outweigh its impact on Section 7 rights. As discussed below, that is certainly not the case.[16] *See Stericycle, Inc.*, 2020 WL 5353967 (applying balancing test where the employer's policy had "no clear time limit" and could be "reasonably interpreted to extend past the period of open investigation").

NYPR's confidentiality rule significantly burdens employees' rights. Employees have a Section 7 right to discuss incidents that may lead to their or their fellow employees' discipline.

[16] The *Apogee* framework governs an employer's one-on-one confidentiality instruction to an employee. *Alcoa Corp.*, 370 NLRB No. 107 (2021). The one exception—where the instruction is "oral" and "limited to a single specific investigation"—does not apply here because, among other things, NYPR's confidentiality rule is written, not oral.

Apogee Retail, 368 NLRB No. 144. The confidentiality policy, however, directly undermines this right because it prevents (b) (6), (b) (7)(C) (and other participants in the investigation) from speaking with employees about the host's alleged misconduct. NYPR's rule is also broad and far-reaching. (b) (6), (b) (7)(C) indicated—without qualification—that the individual who spoke with the newsroom employee regarding (b) (6), (b) (7)(C) investigation could be disciplined. (b) (6), (b) (7)(C), (b) (Aff. ¶ 22. Thus, not only does the rule apply indefinitely, it also forbids employees involved in a disciplinary investigation from discussing discipline or incidents that could result in discipline, even if they do not disclose information that they learned or provided in the course of the investigation. The Board has explained that such speech should be permitted. *See First Am. Enters.*, 369 NLRB No. 54, slip op. at 3 (2020). Moreover, (b) (6), (b) (7)(C) statement could be reasonably construed to mean that the person from the *newsroom* who allegedly spoke to the Times would be disciplined. Board law is clear that "employees not involved in a disciplinary investigation are free to discuss discipline or incidents that could result in discipline without a confidentiality limitation[.]" *Id.*

These burdens outweigh the confidentiality rule's supposed justifications. Indeed, most of the traditional justifications are inapposite because the rule continues to apply even after the investigation is completed. Once an investigation is over, for example, NYPR no longer has an interest in protecting the investigation's integrity or ensuring it proceeds in a prompt manner. There is also no evidence that, based on prior experience, maintaining post-investigation confidentiality is necessary to protect the witnesses' health and safety. NYPR's confidentiality policy is therefore unlawful. *See Stericycle, Inc.*, 2020 WL 5353967 (policy classifying harassment complaints as confidential was overly broad because it infringed protected communications between employees even after an investigation concluded).

3. NYPR Unlawfully Applied its Workplace Standards to Discipline (b) (6), (b) (7)(C) for Engaging in Protected Concerted Activity.

Even if an employer's workplace rule is lawful under *Boeing*, the employer violates Section 8(a)(1) if it *applies* the rule to discipline an employee who engaged in protected activity. *AT&T Mobility, LLC*, 370 NLRB No. 121, slip op. at 7 (2021) ("Unlawfully applying a lawful rule to interfere with Section 7 rights remains a violation of Section 8(a)(1) of the Act and should be enforced as such."). In so doing, NYPR violated Section 8(a)(1).

(b) (6), (b) (7)(C) , tweeted about (b) (6), (working conditions in April 2021. (b) (6), (b) (7)(C), (Aff. ¶ 4. This conduct constituted protected activity. *See supra* Part II.A. In response, (b) (6), (b) (7)(C) through (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) , told (b) (6), (b) (7)(C) the next day that (b) (6), (tweet could violate NYPR's "Norms and Behaviors." (b) (6), (b) (7)(C), (Aff. ¶ 6. (b) (6), (b) (7)(C) also spoke with (b) (6), (b) (7)(C) directly, stating that it is (b) (6), (b) (7)(C), (b) (7)(D) *Id.* ¶ 10. (b) (6), (b) (7)(C) threats constituted discipline and were in direct response to (b) (6), (b) (7)(C) protected

activity. *See supra* Part II.A, II.B.3. As a result, [redacted] violated Section 8(a)(1) by threatening to apply the Norms and Behavior policy solely because [redacted] exercised [redacted] Section 7 rights. *See AT&T Mobility, supra*, slip op. at 4 (employer's statement that it "did not want anyone held accountable for not following policy" was an unlawful threat because the employee's sole act of "not following policy" was protected by Section 7).

4. NYPR's "Norms and Behaviors" policy illustrates the necessity of overruling the *Boeing* standard.

Boeing overruled years of prior, court-approved precedent in favor of a rule fundamentally at odds with the Act. The Act prohibits employer interference with employees' "right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." 29 U.S.C. § 157, 158(a)(1). To ensure that such interference is prevented, longstanding Board precedent prohibits work rules that may reasonably tend to interfere with the free exercise of these rights. *American Freightways Co.*, 124 NLRB 146, 147 (1959). Yet the standard established by *Boeing* does not interpret work rules from a reasonable employee's perspective. Instead, under *Boeing*, "the legality of a rule turns on a balance of myriad factors that employees could not reasonably be expected to comprehend, including distinctions between different types of protected activities; the risk that the rule will intrude on Section 7 rights; distinctions between justifications that have direct, immediate relevance and those that are peripheral; and specific events and other evidence associated with a rule, regardless of whether they are known to employees." *Boeing*, 365 NLRB N.o. 154, slip op. at 28 (dissenting opinion).

Moreover, *Boeing* arbitrarily classifies an entire category of rules governing "civility" as lawful under Section 8(a)(1), regardless of context. *Boeing*, *supra*, slip op. at 3-4 (2017). "Norms and Behaviors" contains a series of such rules (Exh. O):

- "We are thoughtful, empathetic, positive, direct and kind in our communications with one another. We do not speak behind one another's back, or engage in disrespectful or aggressive or passive-aggressive behaviors that impede direct, positive and compassionate communications. We encourage one another to do better, when behaviors need to change."
- "Staff communicate and act respectfully with their managers."
- "We exercise prudence, respect and discretion in our use of social media, and in our responses to comments from listeners/readers."

Such rules are so broad and vague that there is virtually no way that employees could engage in protected concerted activity without violating them. After all, couldn't "distributing

literature that, in impolite language, criticizes an employer's failure to pay employees what they are owed and urges employees to resist" run afoul of NYPR's prohibition of "disrespectful or aggressive or passive-aggressive behaviors that impede direct, positive and compassionate communications"? *See Boeing*, *supra*, slip op. at 39 (2017) (dissenting opinion).

Boeing gives employers like NYPR a green light to maintain rules that chill employees in the exercise of their Section 7 rights. Accordingly, SAG-AFTRA urges the General Counsel to seek *Boeing*'s reversal with the Board.

III. The General Counsel Should Pursue Injunctive Relief.

An injunction under Section 10(j) is appropriate where: (1) there is reasonable cause to believe that unfair labor practices occurred; and (2) the injunction would be just and proper under the circumstances. *Kreisberg v. HealthBridge Mgmt., LLC*, 732 F.3d 131, 141 (2d Cir. 2013) (citing *Hoffman ex rel N.L.R.B. v. Inn Credible Caterers, Ltd.*, 247 F.3d 360, 364–65 (2d Cir. 2001)). Injunctive relief is "just and proper" when it is necessary to prevent irreparable harm or to preserve the status quo. *Paulsen v. Remington Lodging & Hosp., LLC*, 773 F.3d 462, 469 (2d Cir. 2014) (citations omitted).

Here, for the reasons discussed above, there is reasonable cause that NYPR violated Sections 8(a)(1), (3), and (5) of the NLRA. The unifying element of all the violations at issue is NYPR's abrogation of the collective bargaining agreement and its attempt to undermine the Union in the eyes of the employees. NYPR attempted to do so through refusing to process grievances, direct dealing with employees to demonstrate the Union's ineffectiveness, interfering with employees' right for their chosen Union representatives to be present in investigatory meetings, and a protracted and pervasive campaign of surveillance, intimidation and coercion in order to quash the employees' protected concerted activities. Issuing an injunction is necessary to prevent irreparable harm here because of the confluence of unlawful actions that undermine the Union's ability to perform its representative functions.

First, NYPR should be enjoined because it "repudiat[ed] . . . the grievance arbitration provision." *Ahearn v. Dunkirk Ice Cream Co.*, No 89-CV-874, 1989 WL 169121, at *2 (W.D.N.Y. Sept. 14, 1989). It is undisputed that NYPR refused to process several grievances covering a wide range of contractual issues. *See supra* Part I.A. As a result, an injunction is warranted because the "employees' collective bargaining rights may be undermined by the asserted unfair labor practices." *HealthBridge*, 732 F.3d at 142 (quoting *Hoffman*, 247 F.3d at 369). Employee support will predictably erode if the Union cannot protect them through the grievance-arbitration procedure. *See also Frankl v. HTH Corp*., 650 F.3d 1334, 1362 (9th Cir. 2011).

Second, NYPR should also be enjoined from bypassing the Union and dealing directly with employees for the purpose of changing their conditions of employment. Direct dealing inevitably "impair[s] the Union's effectiveness," causes "employee disaffection," and "suppress[es] employee morale and organizational capabilities." *Mattina v. Ardsley Bus Corp.*, 711 F. Supp. 2d 314, 326–27 (S.D.N.Y. 2010). As explained above, NYPR repeatedly asked an unauthorized bargaining representative to discuss NYPR's proposals regarding the pay freeze and vacation carryover policy. *See supra* Part I.B. Viewed together with the refusal to arbitrate grievances or honor the Union's right to be present at investigatory and disciplinary interviews, this constitutes a direct attack on the employees' right to select SAG-AFTRA as their exclusive bargaining agent.

Third, the unlawful discharge of the (b) (6), (b) (7)(C), coupled with the other unlawful actions, merits injunctive relief. *Ley v. Wingate of Dutchess, Inc.*, 182 F. Supp. 3d 93, 105 (S.D.N.Y. 2016). An injunction is necessary to "reestablish the status quo as it existed before the unfair labor practices occurred" and "reassure" the employees that their "rights are not illusory." *Id.* (citing *Fernbach ex rel. N.L.R.B. v. Raz Dairy, Inc.*, 881 F. Supp. 2d 452, 467 (S.D.N.Y. 2012)). Here, before NYPR terminated (b) (6), (b) (7)(C) for (b) (6), protected activity, the employees had a vocal advocate in the workplace and a committed (b) (6), (b) (7)(C) to represent them in disputes with management. *See supra* Part II.B.1. The loss to employees of (b) (6), (b) (7)(C) union and concerted activity constitutes irreparable harm, and (b) (6), (b) (7)(C) should be reinstated to restore the status quo.

Finally—and perhaps most importantly—NYPR's misconduct "threaten[s] to render the Board's processes 'totally ineffective' by precluding a meaningful final remedy." *Kaynard v. Mego Corp.*, 633 F.2d 1026, 1034 (2d Cir. 1980) (quoting *Seeler v. Trading Port, Inc.*, 517 F.2d 33, 38 (2d Cir. 1975)). An injunction is necessary when the chilling effect of management retaliation may outlast the curative effects of the Board's remedial action. *Pascarell ex rel. N.L.R.B. v. Vibra Screw Inc.*, 904 F.2d 874, 878–79 (3d Cir. 1990). Here, NYPR significantly chilled the exercise of its employees' rights under the NLRA. Following (b) (6), (b) (7)(C) termination, the employees were (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C). Aff. ¶ 23. Similarly, following (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) written discipline, the employees stopped being "very vocal" and asking "a lot of questions" during meetings with management. (b) (6), (b) (7)(C), Aff. ¶ 26; *accord* (b) (6), (b) (7)(C) Aff. ¶ 23; (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 8; (b) (6), (b) (7)(C), (b) Aff. ¶ 14 (discussing similar change in employee behavior).

Indeed, the evidence of the chilling effect of NYPR's conduct is overwhelming. One employee was (b) (6), (b) (7)(C), (b) (7)(D) because (b) (6), supervisor stated that (b) (6), had (b) (6), (b) (7)(C), (b) (7)(D) that the employee was seeking SAG-AFTRA's advice. (b) (6), (b) (7)(C), Aff. ¶ 4. Another group of employees (b) (6), (b) (7)(C), (b) (7)(D) if they met with (b) (6), (b) (7)(C) to discuss working conditions. (b) (6), (b) (7)(C) Aff. ¶ 13. Both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), for example, stopped asking questions of management after they

were disciplined because they believed that NYPR would retaliate against them. [redacted] Aff. ¶ 15; [redacted] Aff. ¶ 20. Similarly, after being told by [redacted] that [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted] believed that [redacted] would be fired if [redacted] said (b) (6), (b) (7)(C), (b) (7)(D) [redacted] Aff. ¶¶ 20–22.

In sum, the General Counsel should pursue injunctive relief to halt the chilling effect of NYPR's conduct and to ensure the Board's remedial powers remain effective. Any injunction should rescind NYPR's unlawful discipline and workplace rules, as well as enjoin NYPR from engaging in any future unfair labor practices, including but not limited to: repudiating the grievance procedure, dealing directly with employees, interfering with employees' *Weingarten* rights, and otherwise chilling protected activities through discharges, threats, intimidation, warnings, and surveillance.

Respectfully submitted,

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February 7, 2022

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Re: WNYC/New York Public Media
Case No. 02-CA-277758

Dear Ms. Frank, Mr. Lieber:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

John J. Walsh, Jr.

John J. Walsh, Jr.
Regional Director

cc: (b) (6), (b) (7)(C)
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